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*Karl Steiner*

THE  
AMERICAN BAR ASSOCIATION

SPECIAL COMMITTEE  
*on*  
SUPPLEMENTING  
CANONS  
*of*  
PROFESSIONAL ETHICS

ANNOTATED CANONS

*Compiled by the Chairman for the use  
of the Committee*

8818

NOTE—This compilation is the individual work of the Chairman,  
for consideration by the Committee; the Committee has not considered  
it, and is in no way responsible for it.

JANUARY, 1926

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The Lord Baltimore Press  
BALTIMORE, MD., U. S. A.

B1486

TO SAINT IVO!

*“Sanctus Ivo erat Brito  
Advocatus sed non latro  
Res miranda populo”*

(A mediæval verse—Jephson's *Tour  
in Brittainy*, p. 81, quoted p. 313.  
*Words and Places  
by Isaac Taylor,  
Canon of York.*)

(*Translation:*) Saint Ivo was a Brittainy lawyer  
but not a robber—a wonder to the people!

## AMERICAN BAR ASSOCIATION.

### SPECIAL COMMITTEE ON SUPPLEMENTS TO CANONS OF PROFESSIONAL ETHICS. 1924-1925.

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Ex-Officio \*

### 1925-1926.

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	CHARLES A. BOSTON, Chairman, New York City, New York.

Ex-Officio \*

\* Members of the Standing Committee on Professional Ethics and Grievances.

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## I.

### EXPLANATORY.

#### A.

#### THIS COMMITTEE AND ITS FUNCTION.

At the annual meeting of the Association in 1923 the following resolution was introduced, and in accordance with the By-Laws was, without debate, referred to the Committee on Professional Ethics and Grievances for consideration:

*Resolved*, That the Committee on Professional Ethics and Grievances be requested to report at the next Annual Meeting whether in its opinion it is desirable and proper that the Association shall supplement its Canons of Professional Conduct by adding thereto as Canon No. 33, the following:

"33. Professional employment of lawyer after he had acted judicially in respect to the same matter.

"A lawyer should not accept professional employment to appear in court in a controversy upon which he has previously acted in a judicial capacity."

and also whether any further amendment or supplement to said Canons is desirable, and if so, to make its recommendations in respect thereto.

The committee to which the foregoing resolution was referred, reached the following conclusions:

1. That during the 15 years that have elapsed since the Canons were adopted they have been approved and adopted by almost all of the state and local bar associations of the country, and have been approved or quoted with approval by many of the courts having jurisdiction of disciplinary proceedings against lawyers.

2. That while it might be more desirable to have the Canons consist of a statement of fundamental principles that should govern a lawyer's conduct rather than of definite rules as to specific items of conduct, yet it would not be desirable to suggest any change of method at this time in view of the fact that they have in their present form met with such general approval.

3. That while there can be no objection to any of the present Canons, a few of them might be made more effective by some slight supplements.

4. That there are numerous questions of professional conduct to which none of the present Canons seem applicable, and that it

is therefore desirable to have the present Canons supplemented to such an extent as will be helpful in determining these questions.

5. That to supplement the Canons at the present time would not impair their usefulness or lessen the authority which they have acquired.

6. That though it would be inadvisable to raise any barrier that would prevent changes whenever needed, yet it would be unwise to recommend piecemeal or frequent amendments or additions.

7. That while a specific supplementary Canon of the nature of that recommended in the above resolution is desirable, yet it would be preferable to have it considered at the same time and in the same manner as other suggested supplements.

8. That the matter is of such importance that instead of having the entire responsibility placed on this committee it would be desirable that the supplements proposed at this time be considered and formulated by a representative committee of a size and character similar to that which formulated the present canons, of which the members of this committee might be a part, or with which they might be directed to co-operate.

The committee therefore recommends that a special committee of 15, five of whom shall be the then members of the Committee on Professional Ethics and Grievances, be appointed by the President to consider and recommend to the Association for adoption such supplements to the present Canons of Ethics as they may determine to be desirable, and that the specific supplementary Canon proposed in the resolution be referred to such special committee for its consideration.

The special committee was accordingly appointed, and for the use of this latter committee the following compilation has been made by its Chairman.

## B

### THE IDEALISM OF THE CANONS OF ETHICS.

It may not be amiss to go into another profession for some philosophic light upon the essential difference between that kind of idealism which is fanaticism and that kind which is pragmatism.

A dramatic criticism in the *New York Times* of March 1, 1925, analyzes this difference clearly, and it would seem that

the spirit which characterizes the pragmatic rather than the fanatic should govern the legal profession and the judicial branch the one in formulating, the other in enforcing Canons of Legal Ethics:

Jack Young, a dramatic critic in an article upon Ibsen's Wild Duck, a conscientious idealist, who brings misery wherever he interferes, said:

In all "The Wild Duck" and the critics who have written of Ibsen and his illusion themes, how little is said about idealism in another sense! This other idealism is not reform or uplift. It is not a love affair between one's self and one's soul. It does not require to exercise itself only among vague futures and undetermined super-states of things. The basis of this other idealism is reason, reason as a kind of imagination that perceives the relation to one another of all things, how they check or support one another in the world about them and the world of time. The purpose of this idealism is the discovery of great patterns of relationships, of permanent ideas, that include and illumine our experiences.

It is in this spirit of reason that Canons of Ethics should be conceived, formulated and administered.

### C.

#### CANONS OF LEGAL ETHICS.

##### A BRIEF SKETCH OF THEIR HISTORY AND FUNCTION IN AMERICA.\*

\* Extracts reprinted from Massachusetts Law Quarterly for May, 1916.

#### HISTORY.

In the recent little volume entitled "The Ethics of the Legal Profession," by Hon. Orrin N. Carter, of the Supreme Court of Illinois, Judge Carter traces the history of codification in America, briefly, as follows:

Within the last quarter of a century the state bar associations in the majority of the states have adopted codes of ethics. The first one was that of Alabama, adopted December 14, 1887. The American Bar Association adopted canons of ethics in 1908. This contained many of the fundamental principles in the Alabama code. Several county or city bar associations, especially in the large centers of population, have also adopted codes of a similar character. Most of the state and local codes have been copied very largely from the code of the American Bar Association, or that of Alabama. The rules for admission to the Bar in some jurisdictions require candidates to subscribe to a reasonable standard of ethics.

Any one interested in a fuller account of the history of professional traditions will find Judge Carter's book conveniently short, with a bibliography and table of cases.

## FUNCTION.

In his introduction to this book, Dean Wigmore says:

For lawyers, the most important truth about the law is that it is a profession. That important truth has been more and more forgotten among us, of late years. To restore it to our convictions will be a great service. . . . As a profession, the law must be thought of as ignoring commercial standards of success—as possessing special duties to serve the state's justice—and as an applied science requiring scientific training.

And, if it is thus set apart as a profession, it must have traditions and tenets of its own, which are to be mastered and lived up to. This living spirit of the profession, which limits yet uplifts it as a livelihood, has been customarily known by the vague term "legal ethics." There is much more to it than rules of ethics. There is a whole atmosphere of life's behavior. What is signified is all the learning about the traditions of behavior that mark off and emphasize the legal profession as a guild of public officers. And the apprentice must hope and expect to make full acquaintance with this body of traditions, as his manual of equipment, without which he cannot do his part to keep the law on the level of a profession.

\* \* \* \*

Special lectures on "Legal Ethics" are constantly appearing in the law schools of the country.

## THE PRACTICAL APPLICATION OF THE CANONS.

An honest lawyer is only one kind of an honorable man.

The instinct of honor is always to be ready to face the facts, and to do and consent only to such acts as are worth that price.

Some men object to, and even ridicule, the idea of reducing standards of professional conduct to the form of codified rules, and, as Judge Carter points out, "it is always found difficult to state abstract ethical propositions in practical form" to satisfy lawyers. The convenient word "code" unfortunately tends to create some prejudice against the real value of the group of canons which have been framed to assist members of the profession in dealing with serious and sometimes difficult problems, in connection with which the history of the best practice and the reasons for it are not always conveniently available. There is nothing new in the ideas expressed in the canons.

As a practical matter, the force of these canons is the force of illustration, in a general way, of high standards of fair dealing and good taste. How far men will live up to such standards is for them to decide. . . .

If the canons are read and considered in the light of some of above-quoted passages \* (and especially if the professional his-

\* See quotations following (p. 23) and the Preamble to the Canons.

tory of the ideas expressed is examined), it is submitted that they will be found serviceable to the profession as a whole, to its individual members, and, above all, to the public for the service of which the Bar exists.

#### D.

##### THE CANONS IN EFFECTIVE RULES.

Among the rules adopted by the Court of Appeals of New York for the examination for admission to practice as an attorney and counsellor of the Courts of Record of that state is the following:

Rule VIII in effect July 1, 1911:

. . . . Every applicant shall be given and required to pass a satisfactory examination in the Canons of Ethics adopted by the American Bar Association and by the New York State Bar Association.

The Alabama State Bar was organized pursuant to an act of 1923 as amended (General Acts, 1923, pp. 100-107, 587-588).

The State Bar Commission has adopted regulations for a Committee on the Character and Fitness of Applicants, and rules (34 in number) governing the conduct of attorneys, providing a method for the procedure incident to complaints against lawyers, and on passing upon petitions for reinstatement.

The rules of conduct are more concise in phrase than the Canons of the American Bar Association.

#### E.

##### WHAT MAKES A PROFESSION?

" . . . If there is such a thing as a profession as a concept distinct from a vocation, it must consist in the ideals which its members maintain, the dignity of character which they bring to the performance of their duties, and the austerity of the self-imposed ethical standards.

" To constitute a true profession there must be ethical traditions so potent as to bring into conformity members whose personal standards of conduct are at a lower level and to have an elevating and ennobling effect on those members. . . . "—W. A. SHUMAKER, in Law Notes, Vol. XXVIII, No. 6.

#### F.

##### THE PRACTICE OF LAW.

The Canons do not define the practice of law, nor lawyer.

THE COMMITTEE OF THE CONFERENCE OF BAR ASSOCIATION  
DELEGATES ON A DEFINITION OF THE PRACTICE OF LAW.

The Conference of Delegates of Bar Associations at Boston, Massachusetts, September 2, 1919, adopted the following resolution :

*Resolved*, That it is the sense of this meeting that it is in the interest of society that the intimate and direct relationship of attorney and client shall be preserved, and that corporate or lay practice of law is destructive of that relationship and tends to lower the standard of professional responsibility;

*Resolved further*, That trust companies, while performing proper and legitimate functions of a business and judiciary character, are not constituted or organized for the purpose of furnishing legal advice to clients—drawing wills or furnishing legal services;

*Resolved further*, That the efforts of the Trust Company Section of the American Bankers' Association to eliminate evil practices on the part of trust companies be encouraged and the effort to co-operate with the Bar be cordially welcomed;

*Resolved*, To that end, that we recommend to state and local bar associations that they bring to the attention of the Trust Company Section of the American Bankers' Association any evil practices of trust companies or bankers of which they are aware in order that the bankers' organization may, like the lawyers' organization, purge its ranks of wrongdoing or error;

*Resolved further*, That a special committee of six be appointed to prepare for the use of state and local bar associations, a careful brief of what constitutes practice of the law and what constitutes unlawful and improper practice of the law by laymen or lay agencies, and that said committee report at the next Conference.

The committee, in 1920, reported to the conference.

On what constitutes practice of the law and what constitutes unlawful and improper practice of the law by laymen or lay agencies.

The report was adopted by the conference at the St. Louis meeting, August 24, 1920, and sent to bar associations by direction of the conference.

The reports and recommendations of the conference express the views of the delegates to the conference approved after deliberation and are presented to the American Bar Association and the state and local bar associations represented in the conference for consideration.

The committee in its report said :

Since it is the province of the court to decide only the issues presented to it, court definitions necessarily define practice of the law as to the issues presented by the particular case, and since the several states by statute have in but few instances attempted a definition either by including things allowed or prohibited things not allowed, the Committee submits:

- I. What constitutes practice of the law, as defined:
  - (a) By this committee;
  - (b) By courts and other judicial officers in special instances;
  - (c) By statute in some of the states.
- II. What constitutes unlawful and improper practice of the law by laymen or lay agencies, as defined and discussed by this committee.

## I.

### DEFINITION AND DISCUSSION BY THE COMMITTEE WITH AUTHORITIES.

The practice of the law, as at present and generally understood, is the pursuing as a vocation the learned profession of the law. In other words, the exercise for compensation by a licensed attorney of his learning, skill and reputation, or any of the same in behalf of another, and anyone not so licensed may not do for compensation, or a consideration directly or indirectly (follow as a vocation) anything which a licensed attorney may as such charge compensation for doing.

A condition precedent to the right is the taking by the applicant an oath of office, and the right is a franchise to a natural person of learning, good character, integrity, and ability granted by society for its protection and benefit primarily rather than as a means of livelihood to the grantee, and is therefore not an inalienable right, but is a permissive one, subject to regulation by society, and society is best served and best protected when and where the practice of the law is strictly limited to persons licensed therefor as by the statute required. Present-day practice of the law, in its broadest sense, therefore embraces and comprehends the vocation of personally appearing as an advocate in a representative capacity, or the drawing of papers, pleadings, documents, or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee, master, or any body, board, committee, commission or officer constituted by law, or having authority to settle controversies, or the advising, or counseling as a vocation any person, firm, association or corporation as to any secular law, or the drawing or the procuring of assistance in the drawing, as a vocation, of any papers, documents, or instruments affecting or relating to secular rights, or the doing, as a vocation, of any act in a representative capacity.

in behalf of another, obtaining or tending to obtain, or securing or tending to secure for such other any property or property rights whatever. The doing in a representative capacity, as a vocation, of any of the foregoing by a person not licensed as an attorney, or by a corporation constitutes unlawful and improper practice by such person or corporation. That a corporation cannot practice law is axiomatic. It is not a natural person, it possesses neither learning, good character, nor capacity to take an oath, or to preserve and occupy a personally confidential relation with a client.

Few of the states have by statute attempted to define practice of the law, or to enumerate specific prohibited acts, or things, as being an unlawful practice of the law. Most of them have apparently left the definition and the enumeration of specific prohibitions against same to the interpretation of the courts as instances thereof may arise. However substantially all of the states make requirements for admission to the practice of the law, and requirements common to all states are that the applicant must be a *natural person*, of *good character*, must *take an oath of office*, and as to the time and manner of applying for admission and enrollment must conform to the rules of court in respect thereto. Most states make an educational requirement in addition. From the statutory requirements for admission to practice in the several states, it is obvious that the right to practice is fundamentally a permissive franchise which enures only to a *natural person* possessing the required qualifications for such license, and that it may and cannot be extended, or granted, to a corporation. It is likewise fundamental from the requirements for admission that a natural person not licensed to practice law may not lawfully do so, and that a partnership or association of individuals, some of whom are not licensed to practice law and some of whom are so licensed, may not as such association or partnership lawfully and properly practice law or do law business. Since the practice of the law is a right or franchise permitted or created by society for its protection and benefit rather than the protection and benefit of the practitioner, it is clear that the practice of the law and the doing of law business by corporations, or by persons who have not complied with the requirements prescribed

by society therefor, is a positive injury and menace to society, that society in its own interest, and for its own protection and preservation should and must prevent. Practice of the law is not a business in the general acceptation of that term, never was, and never can be.

The sole inducement to the layman to practice law and do law business is the fee derived therefrom, and to secure this recourse is had to the ordinary commercial, competitive business methods of solicitation and advertising thereby commercializing the profession of the law and the law business, undermining the ethical and professional standards, and destroying public confidence in the lawyers and the courts with a clamor for recall of judges and decisions. The layman, a natural person or corporate, may only compete with the lawyer in the practice of the law and the doing of law business by orally soliciting or advertising to do it more expeditiously, faithfully, intelligently, and at less expense than the lawyer, thereby imputing to the lawyer slothfulness, infidelity, and extortion. A loss of confidence in the courts and lawyers is a sign of governmental decline, and a forerunner of disintegration and anarchy.

#### B. DEFINITIONS FOUND IN OPINIONS BY COURTS AND OPINIONS BY THE ATTORNEY-GENERAL OF NEW YORK.

Under this heading the committee collated numerous quotations from judicial decisions and opinions of the attorney-general of New York.

#### C. STATUTORY DEFINITIONS AND PROHIBITIONS AS EXISTING IN SOME OF THE STATES.

Statutory definitions and prohibitions existing in Massachusetts, Missouri, Montana, New York and Oregon are presented below, without comment other than to direct attention to the Missouri policy, which at once removes the incentive to laymen and lay agencies to practice law and do law business by prohibiting the receiving by anyone not a licensed attorney, directly or indirectly, a fee therefor under penalty of a fine and of a forfeiture to the person paying the fee (unless he bring suit therefor within the time, then to the state) for a sum equal

to three times the fee so charged and received. And, further, by prohibiting under the same penalties the division with a layman or lay agency a fee charged or received by a licensed attorney for practicing law or doing law business. By the Missouri law no discrimination for or against any lay interest is made and under it the licensed attorney is prohibited from pursuing either financial or physical cripples through and by means of lay solicitors or agencies upon a percentage basis. At the same time no layman is penalized for practicing law and doing law business without charge. It frequently happens, for example, that a will, a contract, a deed, a mortgage or other agreement, or written instrument is desired and no licensed attorney is available to prepare the same or the person desiring such instrument is unwilling to pay for same; in such instance he may have the services of a layman.

Under this heading the committee collated the following statutes:

**Massachusetts:** Chap. 432.—An Act to prevent fraud or imposition in the settlement of claims for damages.

**Montana:** Rev. Codes, 1907. Penalty for practicing without license; Ch. 90, Sess. Laws, 1917—definition of practicing law.

**New York:** Penal Law, s. 270. Practicing or Appearing as Attorney without being admitted and registered. S. 271. None but Attorneys to Practice in Cities of the first and second class. S. 272. Penalty. S. 273. Misconduct by Attorneys. S. 274. Buying demands on which to bring action. S. 275. Limitation of S. 274. S. 276. Application when party prosecutes in person or by a corporation. S. 277. Use of Attorney's name by another. S. 278. Attorneys forbidden to defend criminal prosecutions carried on by their partners or formerly by themselves. S. 279. Attorneys may defend themselves. S. 280. Corporations and voluntary associations not to practice law.

**Oregon:** S. 1076. Lord's Oregon laws. Attorney as public officer. Ch. 422. Gen'l Laws 1919. Unlawful practice of law.

## II.

### DEFINITION OF "WHAT CONSTITUTES UNLAWFUL AND IMPROPER PRACTICE OF THE LAW BY LAYMEN OR LAY AGENCIES."

Court definitions under subhead I-B, statutory definitions under subhead I-C, and this committee's definition under subhead I-A, hereof, make it unnecessary for the committee to discuss or enumerate at length specific acts which constitute "unlawful and improper practice of the law by laymen or lay

agencies." Any and all practice of the law by laymen or lay agencies necessarily is unlawful and improper; otherwise there would be no such thing as licensed practitioners of the law. There is no such a thing as good or bad, preferred to excluded laymen in the practice of law, or a little unlawful practice by laymen or lay agencies. Whether an act or series of acts are or are not practice of the law does not depend or turn upon the question of whether the doer thereof is or is not licensed to practice law. If it did, then a wood sawyer appearing in court as an advocate for others, or drawing conveyances, or writing contracts for them in consideration of payment therefor, would be held to be sawing wood, while a licensed lawyer engaged in sawing wood would under such logic be practicing law. The test is whether the act involves a knowledge of the law, a redressing or preventing of a wrong, the enforcing, securing or depriving of a right. Consequently where one as a vocation prepares a conveyance of any species of property whatever, or an instrument, securing, procuring or effectuating it between persons with neither of whom there is privity with him, or the relation of master and servant in the ordinary and usual meaning of that term, he is practicing law unlawfully and improperly. So if an insurer of titles prepares conveyances of title, or other instruments, with respect thereto, not to or from himself, but to or from others with neither of whom there is privity with him or the relation of master and servant in the ordinary sense, he is unlawfully and improperly practicing law. So if a maker of abstracts of title, as a vocation, gives opinions on titles to persons owning or seeking to acquire them, not in privity with him or occupying the relation of master and servant in the ordinary sense, or if he assumes to give the legal effect of the documents, records and instruments in lieu of or in addition to the facts shown by them, he is unlawfully and improperly practicing law. So if a trust company assumes to draw wills or other legal documents, the trust company is unlawfully and improperly practicing law. So if a real estate broker, as a vocation, that is, charges for drawing conveyances or other legal documents between the seller and the buyer, he is practicing law unlawfully and improperly, because he is, obviously, clearly assuming, for a consideration, to prepare instruments legally and correctly conveying the property

of one to the other in full and exact accord with the law. So if one as a vocation enforces, secures, settles, adjusts, or compromises, defaulted, disputed or tortious claims, accounts or controversies between persons with neither of whom he is in privity, or in the relation of master and servant in the ordinary sense, or if he assumes to advise or counsel as to the legal rights in respect thereto, he is practicing law unlawfully and improperly. A distinction between a draft through a bank or through a lawyer or collection agency is that the bank does not assume to advise or inform either the drawer or drawee as to his legal rights, or to present a second time or to sue if not paid, or to compromise or adjust any controversy, or to protect, or to enforce legal rights, but it merely assumes to act as a vehicle or conduit through which the money may be transmitted, and the draft may or may not come into existence because of the default in the terms or time of payment, but in all instances the draft placed with a lawyer or collection agency arises out of a defaulted contract, and the lawyer or agency assumes to present time and again to report, to enforce by suit if need be, and to preserve and protect all of the drawer's rights whatever, and to advise and inform him with respect thereto.

Of course, just as one may eat his own dinner and not someone else's, so may an insurer of titles prepare conveyances to and from himself; an abstracter may pass on the legal effects of instruments to or from himself; an insurer against liability may defend the insured, and a merchant or group of merchants may collect their own claims and not be subject to the charge of unlawful and improper practice of the law. A merchant may charge for delivering goods sold by him without becoming a common carrier, but not so, if he goes into the business of delivering goods for others; an insurer of titles may charge for drawing instruments of conveyance to and from himself and is not thereby guilty of unlawful and improper practice of the law, but it is quite another thing to charge for drawing instruments of conveyance to and from other parties. In short, wherever and whenever a layman or lay agency charges a fee, as an attorney's fee, for services rendered by it of a kind, character, and in a manner that an attorney may render and charge an attorney's fee for rendering, such layman or lay agency is in such instance

unlawfully and improperly practicing law. Unlawful and improper practice of the law for a long time, or to a degree of large and dignified pecuniary proportions, does not make such practice lawful and proper. The right to practice law is not acquired by prescription, nor is it a right permitted only to the big and the great and denied to the little and the lowly. Society alone grants the right for its own protection, and in proportion as the right may be commercialized and prostituted to sordid selfish ends for mere purposes of financial gain is society weakened and injured.

Ever since Moses withdrew to Sinai for the preparation of the Tables of the Law, the lawyer has been, is now, and ever will be the "pillar of cloud by day and the pillar of fire by night," guiding society out from Egypt—the house of bondage, to Canaan—the land of liberty.

#### DEFINITION BY HENRY W. JESSUP.

A much more concise definition, however, of the practice of law than that involved in the report of the Committee of the Conference of Bar Association Delegates, analyzed and quoted above (pp. 8-15), is the following, framed by Henry W. Jessup, Esq., in his recent book upon Legal Ethics:

The practice of law is any service, involving legal knowledge, whether of representation, counsel, or advocacy, in or out of court, rendered in respect of the rights, duties, obligations, liabilities or business relations of the one requesting the service.

#### G.

#### THE PRACTICE OF THE COMMITTEE ON LEGAL ETHICS AND GRIEVANCES OF THE AMERICAN BAR ASSOCIATION.

#### OPINIONS

#### OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES OF THE AMERICAN BAR ASSOCIATION CONCERNING MATTERS OF PROFESSIONAL CONDUCT.

Under Section 2 of By-Law VII the Committee on Professional Ethics and Grievances is authorized to express its opinion concerning proper professional conduct, when consulted by officers or committees of state or local bar associations. (The committee's rules under which such questions are received and answered will be found on Page 282 of Volume XLVIII A. B. A. Reports, 1923.)

## RULES

**ADOPTED BY THE COMMITTEE ON PROFESSIONAL ETHICS AND  
GRIEVANCES UNDER WHICH IT WILL RECEIVE AND HEAR  
CHARGES OF PROFESSIONAL MISCONDUCT AGAINST MEMBERS  
OF THE ASSOCIATION.**

1. Complaints of professional misconduct presented to the committee shall be in writing, shall state the charge, shall state concisely, but in reasonable detail, the facts on which the charge is based, and shall be supported by affidavit.

2. Complaints shall be filed with the Chairman of the committee, who may reject the same if, in his opinion, the facts do not justify further inquiry, or if the complaint has arisen out of the conduct in a judicial capacity of the member against whom it is filed, or if, for any other reason, the complaint is not within the jurisdiction of the committee. If the complaint be rejected the complainant shall have the right to appeal to the committee at its next meeting.

3. A copy of the complaint, if not rejected as provided in Rule 2, shall be submitted to the member against whom it is made and an opportunity given to such member to make answer thereto.

4. If the Chairman, on receiving the answer of the member against whom the complaint is directed, deems that the complaint and answer present a question that should be submitted to the committee he shall submit copies of the complaint and answer to the members of the committee and make such arrangements for the submission of evidence by the parties and for a hearing by the committee as he shall deem proper, subject always to the right of any party to the proceeding to appeal to the committee.

5. The Chairman shall, prior to the time arranged for the submission of evidence or for hearing, furnish the complainant with a copy of such answer or answers as may be received from the member against whom the complaint was made.

6. Should the member against whom the complaint is directed fail to make answer within a reasonable time after the complaint is submitted to him, the Chairman shall transmit to the members of the committee copies of the complaint and of such evidence as may be submitted in connection therewith, together with a statement.

The report of this committee for 1924 contains the following:

The committee is pleased to report that the Treasury Department has included "Conduct contrary to the Canons of Ethics as adopted by the American Bar Association" as a cause for suspension or disbarment from practice in that department (Circular of April 15, 1924, amending Par. 7 of Treasury Department Circular No. 230). The committee also thinks it proper to express its appreciation of the earnest endeavors that have been made by the Committee on Enrollment and Disbarment of the Treasury Department to put the practice before that department on such a high plane that there can be little opportunity for abuse or cause for complaint.

**OPINIONS OF THE COMMITTEE.**

A number of members of the Association have asked the committee to express its opinion concerning various phases of professional conduct. As the committee is only authorized to express its opinion when con-

sulted by officers or committees of state or local bar associations, it has been unable to comply with these requests.

It has been suggested to the members who have made such requests that the matter be submitted to their state or local bar associations. It has also been suggested to them that in the event of their state or local bar association not having an appropriate committee to consider the matter, or if that committee desires assistance, an officer of the association, or the committee itself, can request this committee to express its opinion on the subject. The committee has expressed its opinion on the subject.

The committee has expressed its opinion on such matters which have been submitted to it in accordance with the By-Laws. These opinions will be published as an addendum to this report.

These opinions of this committee, so far as announced, are appended to the appropriate Canons, among the annotations below.

#### OPINION 2.

##### BAR ASSOCIATION POLICY RESPECTING INVESTIGATIONS OF SUPPOSED PROFESSIONAL MISCONDUCT IN ABSENCE OF COMPLAINT.

The committee was requested to express its opinion as to whether, as a matter of fundamental policy, it is desirable that a state or local bar association acting on its own initiative, through its respective committees, undertake the investigation of individual cases of supposed professional misconduct where no specific complaint has been received, or whether it is desirable that it confine its activities of that nature to the investigation and hearing of such complaints as are presented to it.

The committee's opinion :

One of the chief purposes of bar associations is to exert organized effort to lessen abuses in the practice and administration of the law. When members of the Bar commit definite misdeeds affecting strong clients, such clients usually present formal complaints to the proper authorities. But sometimes there are credible reports or rumors of professional misconduct by members of the Bar against whom no formal complaint is made to the authorities of the organized Bar in the locality; and as bar association action can rarely give relief to clients who may be wronged, clients often lack the public spirit to make a formal complaint and to assume the burden of substantiating its definite averments. Likewise individual lawyers hesitate to make the complaint unless they have personal knowledge of the misconduct, and are themselves at least as prominent in the profession as the lawyers involved. For these reasons serious misconduct sometimes would go uninvestigated if no committees of the organized Bar assume the burden.

Again not infrequently the press calls attention to supposed cases of misconduct by lawyers without making any definite charges, and if the facts go uninvestigated the local Bar as a whole is blamed for inactivity.

For the benefit of the profession, therefore, as well as the public good, it would seem desirable that some committee of the local bar association have authority on its own judgment and initiative to go into such charges without requiring any specific complaint to be filed.

## OPINION 3.

## BAR ASSOCIATION POLICY RESPECTING COMMITTEES CONDUCTING INVESTIGATIONS OF SUPPOSED PROFESSIONAL MISCONDUCT.

The committee was requested to express its opinion as to whether, as a matter of fundamental policy, it is desirable that the committee of a state or local bar association whose duty it is to hear and pass upon such charges of professional misconduct as are presented to the Association (usually known as the Committee on Grievances), should also perform the function of inquiry and investigation in cases where no charges have been presented and where the inquiry or investigation is undertaken on the Association's own initiative, or whether it is preferable that in such cases a preliminary inquiry be made by a separate committee (usually known as the Committee on Inquiry) who, where the circumstances warrant it, may file charges for the consideration of the Committee on Grievances.

The committee's opinion:

If the jurisdiction of the Grievance Committee is limited to recommending the expulsion of a member from the Association, their activities might well be limited to consideration of grievances presented to them, since their decision must of necessity be the only judgment on the complaint in which evidence can be judicially weighed, and therefore should be free from any prejudice incident to advocacy. If the jurisdiction of the Grievance Committee is so limited it would therefore be desirable to have a separate committee to undertake inquiry or investigation that may be made on the Association's own initiative.

If, however, the jurisdiction of the Grievance Committee extends to recommending the institution of disbarment proceedings before the courts, there would seem to be no necessity for additional committee of inquiry unless it be to assist the Grievance Committee. The judgment of disbarment being rendered by the courts, the Grievance Committee, after investigation, would probably become prosecutors. Therefore they might well make inquiries and investigations on their own initiative.

In several states a single committee has served with entire satisfaction, both for investigating complaints and investigating inquiries which led to prosecutions for disbarment. In other states and in some local bar associations of the large cities, it has been found desirable to lessen the volume of the Grievance Committee's work by a separate committee charged with the duty of investigation of matters in which it appears desirable that inquiry should be made, though no complaint has been received.

## H.

## COMMITTEES ON PROFESSIONAL ETHICS.

Other bar associations have committees on Professional Ethics, or on Grievances, or on Discipline, or on Unlawful Practice of the Law. Some associations have more than one such commit-

tee, with different functions allotted to each (*e. g.*, the Association of the Bar of the City of New York has a Committee on Grievances to investigate and present complaints against offending lawyers, and a Committee on Professional Ethics to advise inquirers; the New York County Lawyers' Association has two such committees, with corresponding functions, and a third to investigate and with the approval of the board of directors, prosecute those who unlawfully engage in the practice of law).

The Alabama State Bar\* has a Grievance Committee. The rules governing the conduct of attorneys provide:

But no attorney shall be the subject of disciplinary action for any action on his part who has, prior to such action, submitted in writing the specific question to the Grievance Committee and received from such committee its written opinion that such action was justifiable or permissible.

The following is a quotation from a detailed explanation of the activities of the *Committee on Professional Ethics of the New York County Lawyers' Association*, issued May 1, 1924:

This committee has an opportunity to inspire ideals, to consider tendencies, and to recommend, as habit builders, practices which will raise the profession in public esteem, which do not confine themselves to mere conformity with strict legality as the measure of conduct, and which, if observed and cultivated, will establish confidence in the administration of justice in which the individual lawyer plays an important part.

The committee's view is that an attorney and counsellor-at-law occupies a public office and performs a public function for which he is tested by law. This office and function is primarily associated with the administration of justice, though the knowledge of law enables the lawyer to advise as well as to litigate; and admission to the public office is a badge that the lawyer is presumably so equipped. Statutory enactments as well as judicial decisions confine to those admitted as attorneys and counsellors, the exclusive right to practice law as a profession both as representatives of clients before the courts and as advisers and counsellors upon legal rights.

Admission to this public office confers certain privileges and imposes certain duties. Since the exercise of the privileges and the performance of the duties is closely related to the administration of justice, the lawyer's behavior should be such as to inspire confidence in the fairness with which justice is administered according to law. Any conduct upon the part of any lawyer which tends to impair confidence in the purity of the administration of justice is a substantial reflection upon the system.

A lawyer's conduct should conform with ideals which are measured by higher standards than mere minimum requirements. It is not necessary that law should be violated in order that confidence shall be impaired. A man who keeps just within the limits of law and thereby keeps just outside of the criminal classes, whether he be lawyer or not, may excite wonder at his shrewdness, but inspires no confidence in his integrity, and, in the case of the lawyer, provokes suspicion against a system which admits him to its ministry of justice.

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\* *Supra*, p. 7.

It is not sufficient for the preservation of the essential integrity of the system that in the exercise of his privileges and in the performance of his duties the lawyer shall be careful only to avoid punitive discipline under the criminal laws. Without becoming an actual criminal a lawyer's conduct may become so intolerable as to require his disbarment. But, if every lawyer made this limit alone the measure of his conduct, the profession would merit scorn, and the administration of justice would be viewed with suspicion. No system of justice which complaisantly tolerates the abuse of professional privileges or the violation of professional duty by lawyers, can command the confidence of the public.

This committee, therefore, watches tendencies, considers inspiration and rational and practical idealism. It tries, by its advice, to raise standards, and to make a better Bar. It is not satisfied to base judgment purely upon accepted convention or etiquette; its judgments are based upon what its members consider to be foundation principles, the purposes of the judicial system and its jurisprudence, the privileges and duties of lawyers and the best and most reasonable and practical methods of attaining them.

*The Committee on Professional Ethics of the New York County Lawyers' Association* in answer to inquiry expressed the view:

*Admiralty Bar:*

Question

is bound by the same principles of legal ethics as other lawyers. 20

*Patent Lawyers:*

(see *infra*, pp. 35, 136.)

## I.

### THE ANNOTATIONS.

The references to the Century Digest and the Decennial Digest in the following annotations of the Canons were compiled and published by the West Publishing Company, St. Paul, Minnesota, 1915.

The additional annotations herein have been compiled by the Chairman of the special committee upon supplementing the Canons of Professional Ethics of the American Bar Association.

Appended hereto (p. 23 *et seq.*), collated together, are:

(II). The Canons of Ethics of The American Bar Association, with their prefixed Quotations and Preamble with copious annotations (*infra*, pp. 23-129).

(III). Local rules and Canons of Ethics (*infra*, pp. 133-161).

(IV). List of subjects upon which the Chairman of the Committee on Professional Ethics of the New York County Lawyers Association has been consulted, without submission for the opinion of the committee (as printed in the Year Books of the Association) (*infra*, pp. 165-211).

(V). Extracts from opinions of the General Council of the Bar, England (*infra*, pp. 215-221).

(VI). Extracts from the "Law, Practice and Usage of the Solicitor's Profession, England" (*infra*, p. 225).

(VII). A bibliography of publications and data upon professional ethics (*infra*, pp. 261-273).

## II.

### THE CANONS OF PROFESSIONAL ETHICS OF THE AMERICAN BAR ASSOCIATION WITH ANNOTATIONS.

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## A.

### QUOTATIONS PREFIXED TO THE CANONS.

The following quotations are prefixed to the Canons of Professional Ethics adopted by the American Bar Association, 1908.

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belong commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."—GEORGE SHARSWOOD.

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falshood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wiliest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere, in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar."—EDWARD G. RYAN.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."—ABRAHAM LINCOLN.

## B.

### CANONS OF PROFESSIONAL ETHICS.

ADOPTED BY THE AMERICAN BAR ASSOCIATION AT ITS  
THIRTY-FIRST ANNUAL MEETING AT SEATTLE,  
WASHINGTON, ON AUGUST 27, 1908.

*Annotated to Cases and Points* (by the West Publishing Company, St. Paul, Minnesota) with *illustrative examples* of their practical application compiled by the Chairman of a special committee of the Association.

### PREAMBLE.

In America, where the stability of courts and of all departments of government rests upon the approval of the people, it

is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following Canons of Ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.

### C.

#### **THE CANONS.**

##### **1. THE DUTY OF THE LAWYER TO THE COURTS.**

It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

#### **ANNOT.**

Attacking or criticising court as ground for disbarment, see Attorney and Client, Cent. Dig. §§ 59, 60; Dec. Dig. § 43.

Attacking or criticising Court as constituting contempt, see Contempt, Cent. Dig. §§ 6-10; Dec. Dig. § 6.

Suspension or removal of judge and liability of judge for official acts, see Judges, Cent. Dig. §§ 42-45, 165-180; Dec. Dig. §§ 11, 36, 37.

Remarks and conduct of judge on trial of case in general, see Criminal Law, Cent. Dig. §§ 1520-1535; Dec. Dig. §§ 654-658; Trial, Cent. Dig. §§ 80-84; Dec. Dig. § 29.

"The place of justice is a hallowed place; and therefore not only the Bench, but the foot pace and precincts and purprise thereof ought to be preserved without scandal and corruption." . . . —*Bacon's Essay of Judicature.*"—From the "Ancient Precedents" prefixed to the Canons of Judicial Ethics. Approved by the American Bar Association, July 9, 1924.

#### THE RELATED DUTY OF JUDGES.\*

The following matter concerning the related *duty of judges to lawyers* is taken from the Canons of Judicial Ethics approved by the American Bar Association at its Forty-Seventh Annual Meeting at Philadelphia, Pennsylvania, on July 9, 1924.

#### PREAMBLE.

In addition to the Canons for Professional Conduct of Lawyers which it has formulated and adopted, The American Bar Association, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its view respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The Association accordingly adopts the following Canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

#### 1. RELATIONS OF THE JUDICIARY.

The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the state and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his Court, and the witnesses, jurors and attendants who aid him in the administration of its functions.

#### 2. THE PUBLIC INTEREST.

Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the Court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

#### 7. PROMPTNESS.

He should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the Court.

\* Other Canons of Judicial Ethics will be found under Canons 2 and 3 below pp. 38-44; the entire body of Canons of Judicial Ethics approved by the American Bar Association will be found in the Annual Report for 1924, vol. XLIX, p. 760.

### 8. COURT ORGANIZATION.

He should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good natured acquiescence by reason of friendly association with him.

It is desirable too, where the judicial system permits, that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

### 9. CONSIDERATION FOR JURORS AND OTHERS.

He should be considerate of jurors, witnesses and others in attendance upon the court.

### 10. COURTESY AND CIVILITY.

He should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

He should also require, and, so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

### 11. UNPROFESSIONAL CONDUCT OF ATTORNEYS AND COUNSEL.

He should utilize his opportunities to criticise and correct unprofessional conduct of attorneys and counsellors, brought to his attention; and, if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating and disciplinary authorities.

### 15. INTERFERENCE IN CONDUCT OF TRIAL.

He may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.

### 16. EX PARTE APPLICATIONS.

He should discourage *ex parte* hearings of applications for injunctions and receiverships where the order may work detriment to absent parties; he should act upon such *ex parte* applications only where the necessity for quick action is clearly shown; if this be demonstrated, then he should

endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination and investigation as to the facts and the principles of law on which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

#### 17. EX PARTE COMMUNICATIONS.

He should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.

While the conditions under which briefs of arguments are to be received are largely matters of local rule or practice, he should not permit the contents of such briefs presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

#### 18. CONTINUANCES.

Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

#### 31. PRIVATE LAW PRACTICE.

In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practices law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practice in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practice law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of law.

#### 33. SOCIAL RELATIONS.

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not dis-

continue his interest in, or appearance at, meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element in influencing his judicial conduct.

The proposed Canon relating to the conduct of *ex-judges* after their retirement from the Bench and their resumption of legal practice is mentioned above p. 3; the Association has not adopted this Canon.

#### THE DUTY OF THE LAWYER TO THE COURT.

The Canon prescribes the lawyer's attitude to the Bench and its incumbent. But the duty to the court as a public institution is indicated in some of the following answers to inquiries:

The following views relating to the duty of a lawyer in his conduct toward the court have been expressed by the Committee on Professional Ethics of the New York County Lawyers' Association in answer to inquiries:

	Question
<i>Adultery:</i>	
a lawyer should not accept employment to procure a divorce for one known to him to be leading an adulterous life.....	106
a lawyer should not advise or consent to the payment of money to a spouse to procure evidence of his adultery.....	132
<i>Affidavit:</i>	
an attorney should avoid presenting an affidavit which, though true, is misleading because it does not completely state the facts.	40
an attorney should neither make nor procure an affidavit of service of papers stated to be annexed but not annexed.....	118
<i>Assignment:</i>	
it is not improper to institute suit in the name of an assignee for convenience, unless the assignment involves fraud or works injustice .....	92
<i>Brief:</i>	
the relation of the writer of a brief to the court is one, the dignity and responsibility of which, is inconsistent with a scheme whereby a printer advertises to furnish briefs written for the profession by able lawyers..... (See also <i>infra</i> , p. 44.)	36
<i>Court:</i>	
a trial brief should not be submitted to, or accepted by a judge, without knowledge of adverse counsel.....	221
<i>Deception:</i>	
it is not necessarily improper for a lawyer, in usual course, to move for a stay of execution after verdict, and pending appeal without security, without informing the court or adverse counsel that another judgment has been recovered against his client which may imperil collection..... (See also <i>infra</i> , p. 57.)	205

*Disclosure:*

## Question

a lawyer may properly bring suit for the annulment of a marriage, in behalf of one entitled thereto, though the other party has brought suit for divorce; and though the annulment suit is brought in consequence of a proposal by the plaintiff in the divorce suit, caused by a motion for alimony and counsel fees; but the lawyer should fully disclose the fact to the court in each suit.....	54
a lawyer may properly accept employment from a guardian to represent his ward in a matrimonial action, though the lawyer's compensation is paid to the guardian by the adult spouse, provided the fact is disclosed to the court.....	128
(See also <i>infra</i> , pp. 45, 50, 58, 71.)	

*Divorce:*

unlawful collusion varies in different states.....	193
a lawyer may properly advise or assist a wife, a citizen of one state to actually remove her residence in good faith to another, in order to procure a divorce under its laws, upon a ground not permissible at her former residence, when the cause exists and is not the result of collusion; though the husband requests it and offers a money settlement to induce it; provided no imposition is practiced and the facts are fully made known to the court to which she applies for a divorce (majority opinion; minority regarding it as an unprofessional arrangement to escape the operation of laws).....	100
the vice of such a situation, does not arise from the state of the laws, but from possible imposition on the wife and upon the foreign court, by concealment and fraud; the careful observance of the conditions would tend to minify such arrangements and to rob them of the character which has led to the most serious criticism (majority opinion).....	100
a fictitious controversy should not be foisted upon a court.....	171
a lawyer may properly advise his client to execute a power of attorney to attorneys of his selection to appear for him in a foreign court in a suit brought against him, so as to give validity to the decree of divorce.....	171
in the absence of contrary law or rule, it is not improper to stipulate that unless the court shall require the disclosure, the name and address of a correspondent shall not be disclosed, in the pleadings or otherwise.....	186
any such stipulation should be disclosed to the court (majority opinion) .....	186
it is improper to stipulate that the stipulation shall not be used or disclosed in the action.....	186
it is not improper, in good faith, to enter into and carry out an agreement to discontinue a separation suit, and to institute a divorce suit, on the confession of the husband's past adultery, and his furnishing the names of witnesses, provided such agreement is not illegal in the particular jurisdiction, and each attorney is satisfied of his client's good faith, and the agreement is in writing, and is disclosed to the court in the divorce action. Attorneys should scrutinize such offers with caution.....	192
accepting authority from an absentee to admit service of process, appear and file a proper answer, is not improper nor does it necessarily imply unlawful collusion.....	193

an agreement not to interpose a defense is against public policy; it should not be countenanced by attorneys..... 205

the interposition of an unverified answer denying adultery is a statutory right in New York; if the client desires it, the attorney may interpose it, though informed by his client that the charge is true; the answer in such suits has not the effect of an ordinary pleading and its presence does not operate as a deception ..... 206

(See also *infra*, pp. 34, 50, 77.)

*Duty to Court:*

a lawyer who has obtained an indulgence on the ground that he does not know his client's whereabouts, and who then learns it in confidence, should acquaint counsel for the adverse party, and in a proper case, the court, with the fact that he now knows his client's whereabouts but has learned it in confidence..... 217

(See also *infra*, p. 83.)

*Executor:*

not entitled to receive fees for legal services, should not receive a part of the fees allowed to his legal counsel; nor should such division be concealed from the court which allows such counsel fees ..... 26

(See also *infra*, p. 53.)

*False Statement:*

an attorney should view with disfavor any offer by the adverse party to stipulate to furnish evidence of past offense in consideration of advantages to the latter..... 86

in such case, however, if satisfied of the good faith of his client he may proceed as suggested in the offer, if he makes full disclosure to the court and advises his client that the court may decline to confirm ..... 86

a lawyer should not make a false statement to a jury, though he does so to counteract the effect of unfair conduct of his adversary ..... 127

a lawyer should not seek to secure for his client relief predicated upon testimony known to him to be false..... 146

if a lawyer concludes that false testimony has been given in behalf of his client and that the further prosecution of the action would be an imposition on the court, and his client withdraws consent to his retirement or a dismissal or discontinuance, he should privately state to the court his desire to withdraw, with his reasons and ask that the cause be continued to enable his client to procure other counsel..... 146

a lawyer who discovers that false testimony has resulted in an advantage to his client, and who has been unable to induce his client to forego the advantage, should acquaint the injured party with the falsity..... 215

*Infant:*

a lawyer employed to prosecute the rights of an infant, should not accept compensation from the insurer of the adverse party without full disclosure of the fact to the court—and in any event (except where a rule of court provides adequately for the protection of the infant's interests), the practice is not to be commended ..... 183

(See also *infra*, p. 123.)

*Separation:* Question  
 agreement to discontinue a suit for separation and to bring action for divorce, on the husband's confession and furnishing the names of witnesses to his adultery, is not necessarily improper, provided it is not illegal under the law of the particular jurisdiction, and provided it is in good faith, is in writing, and is disclosed to the court in the divorce action, but each attorney should satisfy himself of his client's good faith and the absence of collusion; attorneys should scrutinize such offers with caution. 192

*Withdrawal:* trial counsel who concludes that false testimony has been given in behalf of his client and that further prosecution would be an imposition on the court, and whose client refuses to consent to his retirement or to a dismissal or discontinuance, should privately state to the court his desire to withdraw and his reasons therefor, asking that an opportunity be given to his client to procure other counsel ..... 146

a lawyer should not assist a client in perpetuating a fraud, and should withdraw from a cause if satisfied that his further participation would produce that result..... 181

(See also *infra*, pp. 37, 82.)

For English views, see below, Subdivision VI, pp. 231 *et seq.*, items 301, 302, 305, 322, 354, 356, 358, 1088.

#### THE LAWYER'S PUBLIC DUTY.

The Canon does not advert to this; but inquiries have elicited answers which indicate that the lawyer owes a duty not only to the incumbent of the Bench, and to the court as an institution; but a further duty which may be deemed to be cognate to the narrower duty indicated in this Canon.

The following views relating to the public duty of a lawyer have been expressed by committees of Bar Associations in answer to inquiries:

#### OPINION

#### OF THE COMMITTEE ON PROFESSIONAL ETHICS AND GRIEVANCES OF THE AMERICAN BAR ASSOCIATION.

#### OPINION 6.

#### PARTNERSHIP NAME—CONTINUED USE THEREOF BY SURVIVING AND SUCCEEDING PARTNERS.

The committee was requested by a local bar association to express its opinion as to the propriety of the surviving partner or partners continuing a law practice under the partnership name, after the death of a partner whose name is included in the firm name.

The committee's opinion was stated by Mr. Taylor:

It, of course, does not admit of question that a surviving partner may not use the firm name for the purpose of misleading former clients of the firm or others into the belief that a deceased partner is still alive and is still a factor in the business of the firm. Such a course of procedure would be on a par with any other fraudulent practice made use of for the purpose of attracting business and would be equally reprehensible whether or not the continued use of the firm name is permitted by the local statutes or common law prevailing in the community. Because of this, the surviving partner continuing to use the firm name should be particularly careful to comply with all requirements of law or custom in regard to the publication of the fact of the death of his partner and his continued use of the name and to clearly indicate on his firm stationery and in all other reasonable ways that the firm name is merely the name under which he is conducting business.

The question is raised whether the continued use of the firm name by a surviving partner, irrespective of any intent to deceive, is of itself contrary to the ethics of the legal profession.

The practice of continuing to use a firm name after one or all of the original partners are dead or have ceased to be members of the firm has prevailed in New York and in other jurisdictions for many years. The same provisions of law as to the use of such names prevail in the case of legal firms as in the case of firms generally, and there is no ground for believing that the propriety of this practice has, in the long course of years in which it has prevailed, been seriously called in question. The fact undoubtedly is that the use of partnership names by surviving and succeeding partners is not intended to mislead anyone as to the personnel of the firm, ought not to mislead anyone and does not mislead anyone. The firm name does not, in view of the long-established practice and usage, create any presumption that the former partners whose names appear in the firm title are still active members of the firm, but merely indicates that the firm is a continuation of the firm in which they were once partners. Of course, in most cases, the partner's surname alone is used in the firm name. If the continued use of the firm name carried the implication that a partner having such a surname was still a member (which, however, according to custom and practice it does not), there would still be no implication that the partner having such surname was the original partner. If the continued use of the name is to be regarded as unethical because misleading, the continued use of the name would be just as misleading and therefore just as unethical if in place of the deceased partner there were another partner having the same surname. It is certain, however, that the use of the firm name "Jones, Smith & Robinson" would not be regarded as misleading or unethical because the "Smith" of the present firm is a different man from the "Smith" who was the original partner. Equally, the continued use of the name would not be misleading or unethical where the original "Smith" is dead and his successor bears a different name or there is no successor. Custom, usage and the statutory provisions all recognize that a firm name in the case of a law firm as well as in the case of any other firm does not identify the individual members of the firm.

The necessary conclusion is that the continued use of a firm name by a surviving partner is not in and of itself unethical. This conclusion appears to be fully borne out by the authorities in Rowley, 1 Modern Law of Partnership, 331. It is said:

In many cases it has been held that good-will cannot arise in a professional business which depends on personal skill and confidence.

However, it is recognized that lawyers and physicians may sell their business or sell an interest in it to younger members in the profession who become partners, and gain some advantage from associating with an older man in the profession, and in that sense there is a good-will in professional pursuits which is of value.

In 26 Halsbury's Laws of England 843, the legal right of solicitors to continue business under the old firm name is recognized:

Unless otherwise provided by the partnership deed, the interest of a partner in the business of a solicitor ceases upon his death and merges into the interests of the surviving partners. Upon the dissolution of a solicitor partnership without any sale or assignment of the good-will of the business and without any provision as to the use of the firm name, each of the partners is entitled to carry on business under that name, provided that he does not by so doing expose his former partners to any risk of liability, which must depend upon the circumstances of each case.

See: *Bunn vs. Guy* (1803), 4 East 190; *Burchell vs. Wilde* (1900), L. R. 1 Ch. Div. 551; *Levy vs. Walker*, 10 Ch. D. 436; *Aubin vs. Holt* (1855), 2 Kay & Johnson, 66.

The necessary corollary to the conclusions that have been stated is that, if in a local community there is a custom whereby a firm name serves to identify the individual members of the firm, so that the use of the firm name amounts to a representation that certain individuals are members of the firm, the continued use of the firm name might be misleading and the local custom should be observed. A special situation to which the conclusions stated are not necessarily applicable arises when a member of a law firm goes on the Bench, and the continued use of his name in the firm name would indicate the form of connection between the judge and the firm. Under such circumstances propriety would frequently require that the name of the judge should be dropped from the firm name.

Doubtless many cases will arise where the propriety of the continued use of the firm name must be decided according to the special facts and general principles of propriety, but these exceptional cases do not detract from the truth of the general proposition which has been stated.

By the Committee on Professional Ethics of the Association of the Bar of the City of New York;

*Agreement:* Question  
with prospective witness, to induce him to testify to facts which tend to disgrace him, that attorney will represent him in case any suit is brought against him and client will indemnify him, should be disclosed to court and adverse counsel before he testifies ..... 8

*Broker* (see also *Business*, *infra*, p. 33).

*Business:* Question  
it is not improper for a lawyer to take out a license as an insurance broker, provided it is not used as a cloak to obtain legal business, and provided his practice is not inconsistent with the principles which should govern the conduct of a lawyer..... 25  
(See also *infra*, pp. 38, 255, 258.)

*Clerk: Sign* Question  
it is misleading, and therefore improper, for an attorney to place upon the door of his office the name of a student not admitted to the Bar ..... 13  
(See also *infra*, p. 48.)

	Question
<i>Crime:</i>	
a lawyer should not induce violation of law, to obtain evidence of crime .....	23
<i>Foreign Attorney:</i>	
the name of a person not admitted to practice in the state, where a law firm practises, should not be used on the firm's stationery or office door without clearly indicating that he is not a member of the Bar of the state, and does not intend to practise there .....	3
(See also <i>infra</i> , p. 35.)	
<i>Name:</i>	
the name of a person not admitted to practice in the state, where a law firm practises should not be used on the firm's stationery or office door without clearly indicating that he is not a member of the Bar of the state and does not intend to practise there .....	3
it is not improper for the name of one member to be used for a law firm, though there are several partners.....	22
<i>Partnership:</i> See <i>Name, supra</i> . See <i>infra</i> , p. 35.	
<i>Witness:</i>	
agreement with prospective witness, in consideration of his testifying respecting facts which would tend to degrade him, that attorney will represent him in any suit which may be brought against him, and client will indemnify him, whether illegal or not, should be disclosed to the court and adverse counsel before he testifies .....	8
By the <i>Committee on Professional Ethics of the New York County Lawyers Association:</i>	
<i>Agreement:</i>	
an attorney may not properly enter into an agreement for the unjust destruction of property rights.....	21
(See also <i>infra</i> , p. 76.)	
<i>Compensation:</i>	
a lawyer, subscribing witness to a contested will, may properly accept compensation for his time spent in attending court to testify upon the contest, where the compensation is voluntarily tendered at the close of the litigation, w'thout antecedent agree- ment nor conditioned upon the amount involved or the success of the litigation or the giving of particular testimony.....	101
(See also <i>infra</i> , pp. 48, 63.)	
<i>Disbarred Attorney:</i>	
his rights vary in different jurisdictions.....	186
another attorney should not employ him to render services which he is prohibited to perform, or which lie in a doubtful zone... .	186
<i>Divorce:</i>	
a lawyer should not assist a client to marry, even in another state, when a divorce decree prohibits his marriage, though the prohibition is ineffectual in such state.....	12
a lawyer should not accept employment to procure a divorce for one known by him to be living an adulterous life.....	106
a lawyer should not pay or consent to the payment of money to a spouse for evidence of his adultery.....	132

a lawyer should not countenance a bargain with the husband accused of adultery, to permit a witness under his control to prove his offense (though past, and committed without the consent, connivance, privity, or procurement of his wife), in consideration of the wife's release of all claims for future support for herself and children.....	163
payment to a witness for unsealing his lips is never proper..... (See also <i>supra</i> , p. 30, <i>infra</i> , pp. 50, 77.)	165
<b>Foreign Attorneys:</b>	
association of a New York lawyer with a foreign attorney for the practice of law is improper.....	23
a New York lawyer may not properly announce his association with a foreign lawyer for the practice of law without clearly disclosing that the foreign lawyer does not intend to practice in New York.....	23
the sign of a foreign lawyer and his letter head should exclude the inference that he is a member of the local bar.....	134
advertising by lawyer of one state, resident in another, where he is not admitted to practice, by inserting a card in a local newspaper at his place of residence, and there conferring professionally with clients in respect to matters in the first state, is not professionally improper, unless it conflicts with the law of his residence .....	237
(See also <i>supra</i> , p. 34, <i>infra</i> , p. 216. English barrister and foreign lawyer); <i>infra</i> , p. 256 (foreigners as English solicitors).)	
<b>Notary Public:</b>	
though a law student, should refrain from the business of drawing legal papers.....	38
<b>Office of Attorney:</b>	
relates to the administration of justice; it exists for the public good, and not primarily for the private advantage of the lawyer .....	47-preamble
private advantage should not defeat the plan of public justice .....	47-preamble
(See <i>supra</i> , p. 19.)	
<b>* Partnership:</b>	
a New York lawyer should not form a partnership for the practice of law in New York with persons not qualified to practise in New York.....	24
<b>Patent Attorney:</b>	
the advertisement of a card of a patent attorney, stating that he secures patents, or that he was formerly an examiner in the United States Patent Office, is not improper.....	58
it is improper for a lawyer to advertise urging his employment as a patent attorney.....	65
a lawyer is not absolved from professional obligations because he is also a patent attorney or expert.....	150
he may not properly volunteer information for use in pending litigation or by competitors or patentees on condition of being compensated for it.....	150

\* Other opinions upon partnerships in the practice of law will be found under Canon 27, *infra*, p. 106.

it is not improper for him to use his knowledge of patent law and scientific principles in order to facilitate the sale of patent rights for his own inventions..... 150

it is not improper for a newspaper to carry as news, a list of patents issued, compiled by him, with his name as compiler, and designating him as patent attorney..... 174

a partnership between a lawyer, and a registered patent attorney, not a lawyer, for the rendition of legal services by the lawyer is improper (majority opinion)..... 209

therefore the following acts are also improper:

division of fees between the lawyer and the registered patent attorney for an appeal to the courts; or for infringement suit; or for incorporation of a company;

rendition of bill in firm name for such services..... 209

a lawyer should not become counsel to patent attorneys (not lawyers), where they represent on their letter heads, by implication, that they furnish his professional services to their patrons .....

214

*Pleading:*

if the facts be truthfully pleaded, an attorney may properly present any fairly debatable law question to the court for determination; but he must truthfully plead the facts as they are known to him; and if he plead their legal effect, he must believe that they fairly warrant the statements..... 95

in a divorce suit (in New York), if a client desires it, it is his statutory right to interpose an unverified answer denying adultery; if he so desires, his attorney may therefore interpose such answer, though informed by his client that the charge is true; the answer has not the effect of an ordinary pleading and its presence does not operate as a deception..... 206

*Prosecuting Attorney:*

should not accept as a juryman one who has privately expressed an opinion of the guilt of the accused, without informing the judge and the counsel for the accused..... 145

*Public Officer:*

it is not essentially improper for an Assistant United States District Attorney to carry on private litigation in state courts which does not interfere with his official duty..... 82

prosecuting attorney may not be amenable to the principle which discourages publications by a lawyer respecting pending or anticipated litigation..... 103

but his course should be dictated solely by the public interest, and should be taken with due regard to law..... 103

*Public Policy:*

high standard of professional dignity and propriety, conforms to public policy..... 172

the committee does not construe statutes declaring public policy. 188

*Selective Service Law and Regulations:*

a lawyer may properly render and charge a parent upon his employment for services to his son in securing lawful exemption from the draft..... 149

in the legal advisory boards established under the law and regulations, lawyers should give their services freely and without compensation .....	(supplement) 149
<i>Testimony:</i>	
a bargain exacted by a husband to obtain the testimony of a necessary witness to the adultery of a husband, whereby the husband is to secure a release from his wife of all claims for the future support of herself and children, should not be countenanced by a lawyer.....	163
(See also <i>infra</i> , pp. 72, 79.)	
<i>Threats:</i>	
an attorney may properly give warning of threats of intended violence by his client.....	13
an attorney should not threaten disciplinary proceedings against another attorney as a means of collecting money from the latter .....	19
it is not improper for a lawyer to couple with a lawful demand, a statement that if not paid, an action will be begun for its enforcement .....	107
a threat of legal proceedings made in bad faith or to support an unfair or unreasonable offer is improper.....	164
but a reasonable offer upon a fair basis, may with propriety be supported in argument, by a statement in good faith, that if not accepted, the client will be advised in accordance with his legal rights .....	164
<i>Trial:</i>	
trial counsel, who concludes that false testimony has been given in behalf of his client, who withholds his consent to the retirement of the counsel or to a dismissal or discontinuance, should privately state to the court his desire to withdraw with his reasons and ask a continuance to enable his client to obtain other counsel .....	146
(See also <i>infra</i> , p. 73.)	
<i>United States Attorneys:</i>	
the considerations which should govern them in accepting and conducting private employment.....	82
<i>Venue:</i>	
in the absence of some plain declaration of public policy, it is not improper to select a venue, permitted by law, for a divorce action, though the parties reside elsewhere.....	188
<i>Withdrawal:</i>	
it is not proper for a lawyer to withdraw from litigation without just cause; it is not just cause for withdrawal that his clients insists upon the examination of a witness, who the lawyer believes will not tell the truth unless he is paid; he should advise his client, but if his client insists should subpoena the witness and proceed the trial, not, however, advising the client to pay money to unseal the lips of the witness....	110
trial counsel who concludes that false testimony has been given in behalf of his client and that further prosecution would be an imposition on the court, and whose client refuses to consent to his retirement or to a dismissal or discontinuance, should privately state to the court his desire to withdraw and his reasons therefor, asking that an opportunity be given to his client to procure other counsel.....	146

a lawyer should not assist a client in perpetrating a fraud, and should withdraw from a cause if satisfied that his further participation would produce that result..... 181  
 (See also *supra*, p. 31, *infra*, p. 82 (English Solicitor, *infra*, p. 245).)

For English views upon a barrister engaging in business, see *infra*, p. 216; that solicitor is not precluded from engaging in business, see below, Subdivision VI, pp. 255, 258, items 1179, 1213; that subjects of foreign states should not be admitted as solicitors, p. 256, item 1195\*.

## 2. THE SELECTION OF JUDGES.

It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

### ANNOT.

Appointment, eligibility, and qualification of judges, see Judges, Cent. Dig. §§ 1-23; Dec. Dig. §§ 1-5.

### JUDICIAL FITNESS.

The following Canons of *Judicial Ethics* approved by The American Bar Association, July 9, 1924, are of cognate relationship.

#### † 4. AVOIDANCE OF IMPROPRIETY.

A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach.

#### 5. ESSENTIAL CONDUCT.

He should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious

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† Other Canons of Judicial Ethics will be found under Canon 1, *supra*, pp. 25-28, and Canon 3, *infra*, pp. 42-44; the entire body of Canons of Judicial Ethics approved by The American Bar Association will be found in Annual Report, 1924, vol. XLIX, p. 760.

of the principles of the law and diligent in endeavoring to ascertain the facts.

#### 6. INDUSTRY.

He should exhibit an industry and application commensurate with the duties imposed upon him.

#### 21. IDIOSYNCRASIES AND INCONSISTENCIES.

Justice should not be moulded by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgments, or spectacular or sensational in the conduct of the court. Though vested with discretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

In imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency.

#### 24. INCONSISTENT OBLIGATIONS.

He should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

#### 25. BUSINESS PROMOTIONS AND SOLICITATIONS FOR CHARITY.

He should avoid giving ground for an reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

#### 26. PERSONAL INVESTMENTS AND RELATIONS.

He should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information, coming to him in a judicial capacity, for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

### 27. EXECUTORSHIPS AND TRUSTEESHIPS.

While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

### 28. PARTISAN POLITICS.

While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

### 29. SELF-INTEREST.

He should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

### 30. CANDIDACY FOR OFFICE.

A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.

While holding judicial office he should decline nomination to any other place which might reasonably tend to create a suspicion or criticism that the proper performance of his judicial duties is prejudiced or prevented thereby.

If a judge becomes a candidate for any office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

### 34. A SUMMARY OF JUDICIAL OBLIGATION.

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with

the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

The *Committee on Professional Ethics of the New York County Lawyers' Association* has, in answer to inquiries addressed to it, expressed the following views:

<i>Judge:</i>	Question
a former judge should not permit his partners to quote in a brief his present opinion as to the scope and effect of a judicial opinion formerly delivered by him, and now cited as an adverse precedent .....	34
of a Court of Appeal may properly prosecute his own suit in an inferior court, from which an appeal lies to the court of which he is a judge, without resigning his office.....	52
he should not sit as judge in his own cause, nor participate in the deliberations, or influence his colleagues thereon.....	52
and he should not personally try or argue his own cause in the court of which he is a member.....	52
should not solicit subscriptions to a charity from members of the Bar .....	104
should not engage or assist in selling corporate securities, nor permit his name to be used for the purpose; nor engage in the organization, promotion or financing of a corporation.....	133
a judge should not accept a trial brief without the knowledge of adverse counsel.....	221

### 3. ATTEMPTS TO EXERT PERSONAL INFLUENCE ON THE COURT.

Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the judge as to the merits of a pending case, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

#### ANNOT.

Attempting to influence court as constituting contempt justifying disbarment of attorney, see Attorney and Client, Cent. Dig. § 60.

The following cognate Canons of *Judicial Ethics*\* were approved by The American Bar Association, July 9, 1924:

#### **12. APPOINTEES OF THE JUDICIARY AND THEIR COMPENSATION.**

Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances, whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

#### **13. KINSHIP OR INFLUENCE.**

He should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

#### **14. INDEPENDENCE.**

He should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

*Additional Canons of Judicial Ethics*, which are not cited above as cognate to the foregoing Canons of Professional Ethics, have been approved by the American Bar Association as follows:

#### **3. CONSTITUTIONAL OBLIGATIONS.**

It is the duty of all judges in the United States to support the federal Constitution and of the state whose laws they administer; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees.

#### **9. CONSIDERATION FOR JURORS AND OTHERS.**

He should be considerate of jurors, witnesses and others in attendance upon the court.

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\* Other Canons of Judicial Ethics will be found under Canons 1 and 2, *supra*, pp. 25-28, 38-41; the entire body of Canons of Judicial Ethics approved by The American Bar Association will be found in the Annual Report for 1924, vol. XLIX, p. 760.

### 19. JUDICIAL OPINIONS.

In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is desirable that Courts of Appeal in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such questions.

But the volume of reported decisions is such and is so rapidly increasing that in writing opinions which are to be published judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principles, dissenting opinions should be discouraged in courts of last resort.

### 20. INFLUENCE OF DECISIONS UPON THE DEVELOPMENT OF THE LAW.

A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary or arbitrary power, but a judge under the sanction of law.

### 22. REVIEW.

In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the questions arising upon the trial exactly as they arose, were presented, and decided, by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done may be irremediable.

### 23. LEGISLATION.

A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversies; and he may well contribute to the public interest by advising those having authority to remedy defects of procedure, of the result of his observation and experience.

### 32. GIFTS AND FAVORS.

He should not accept any presents or favors from litigants, or from lawyers practising before him or from other whose interests are likely to be submitted to him for judgment.

In answer to an inquirer the *Committee on Professional Ethics of the New York County Lawyers' Association* expressed the view that

<i>Brief:</i>	<i>Question</i>
a trial brief should not be submitted to or accepted by, a judge without the knowledge of adverse counsel.....	221 (See also <i>supra</i> , p. 28.)

### 4. WHEN COUNSEL FOR AN INDIGENT PRISONER.

A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

#### ANNOT.

Assignment as counsel by the court, and skill and care required of attorney, see Attorney and Client, Cent. Dig. §§ 31, 218; Dec. Dig. § 23; Criminal Law, Cent. Dig. §§ 1500-1505; Dec. Dig. § 641.

While the following answers do not relate to prisoners, they do relate to poverty and charity:

By the *Committee on Professional Ethics of the Association of the Bar of the City of New York*:

<i>Charity:</i>	<i>Question</i>
to a client, under distressing circumstances, as an inducement to the employment of a lawyer to prosecute his rights, is professionally improper though charity itself accords with the best traditions of the profession.....	24

In answering an inquiry the *Committee on Professional Ethics of the New York County Lawyers' Association* expressed the following view:

<i>Compensation:</i>	<i>Question</i>
a reasonable charge for professional services is not improper in securing an allotment for the neglected wife of an enlisted soldier .....	173
or for the former wife of a deceased soldier from whom she procured a divorce.....	173

<i>Poverty:</i>	
allowances may be given in proper cases for loss of time of witnesses, especially in the case of poor persons.....	165 (See also <i>supra</i> , p. 44, <i>infra</i> , p. 248.)

For English views of accepting compensation for services to one suing *in forma pauperis*, see below, Subdivision VI, p. 248, items 1110, 1111.

## 5. THE DEFENSE OR PROSECUTION OF THOSE ACCUSED OF CRIME.

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

### ANNOT.

Defense of criminal in general, see Attorney and Client, Cent. Dig. §§ 31, 218; Dec. Dig. § 23; Criminal Law, Cent. Dig. §§ 1496-1506; Dec. Dig. § 641.

Misconduct of counsel, ground for new trial, see Criminal Law, Cent. Dig. §§ 2197-2201; Dec. Dig. § 919.

Functions of office and powers and duties of prosecuting attorneys, see District and Prosecuting Attorneys, Cent. Dig. §§ 1, 34-37; Dec. Dig. §§ 1, 8, 9.

The *Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, expressed the views that:

<i>Disclosure:</i>	Question
a lawyer may not properly disclose to police officials his knowledge of the present whereabouts of his client, a confidential communication from the latter, though he has fled from the jurisdiction while under a criminal charge.....	70 (See also <i>supra</i> , p. 29, <i>infra</i> , pp. 50, 58, 71.)

<i>Duty to Client:</i>	
a lawyer may not properly refuse to honor a client's order for the delivery of the client's property in his possession, because the client has fled from the jurisdiction while under a criminal charge .....	70

<i>Crime:</i>	
confidential communications do not preclude a lawyer from disclosing that his client contemplates the commission of a crime .....	84 (See also <i>supra</i> , p. 34.)

## 6. ADVERSE INFLUENCES AND CONFLICTING INTERESTS.

It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this Canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

### ANNOT.

Acting for adverse parties in different capacities or receiving compensation from adverse party, see Attorney and Client, Cent. Dig. §§ 27-30, 208, 229, 307; Dec. Dig. §§ 19-22, 113, 130.

While the specific provisions of this Canon are clear enough, the implications of the principle extend as well to other situations which are illustrated in some of the following answers to inquirers:

*Answers of Committee on Professional Ethics of Association of the Bar of the City of New York:*

<i>Adverse Party:</i>	<i>Question</i>
it is improper for a firm to accept employment from a former client of one member, when another member was formerly, as law clerk, familiar with the matters in dispute, in the office of his former employers, who were then counsel for the adverse party .....	2
the attorney for a church (defendant) should not request its minister to request the plaintiff (represented by counsel) to submit to a physical examination in behalf of the defendant, though the attorney has not appeared for the defendant.....	17
the attorney for a defendant and his insurer should not send a representative to interview the plaintiff without the consent of the plaintiff's attorney .....	18

receipt of compensation from an adverse party to induce client to accept a sum of money in relinquishment of his rights is not improper if the client knows and consents and the lawyer is satisfied that it is not improper.....	19
<i>Clerk:</i> it is improper for a firm to accept employment from a former client of one member when another member was formerly, as law clerk, familiar with the matters in dispute, in the office of his former employers, who were then counsel for the adverse party. (See <i>infra</i> , p. 48.)	2
<i>Confidential Communications:</i> it is improper for a firm to accept employment from a former client of one partner when another partner was formerly as law clerk familiar with the matter in dispute, in the office of his former employers, who were then counsel for the adverse party. (See <i>infra</i> , p. 48.)	2
<i>Duty to Client:</i> it is improper for a firm to accept employment from a former client of one of its members when another member was formerly as law clerk familiar with the matters in dispute, in the office of his former employers, who were then counsel for the adverse party.....	2
acceptance of employment from plaintiff in civil action for assault brought against one whom the attorney has previously represented in a criminal prosecution for the same assault is improper .....	4
(See <i>supra</i> , p. 45, <i>infra</i> , pp. 51, 57, 61, 68, 71, 81, 82.)	
In answer to inquiries the <i>Committee on Professional Ethics of the New York County Lawyers' Association</i> has expressed the following views:	
<i>Adverse Interests:</i> a lawyer should not volunteer or urge the employment of counsel named by him to represent interests adverse to his client .....	25
where a client consents that his attorney may disclose evidence of his implication in an attempt to defraud, it is not improper for the attorney to refer the defrauded persons to a reputable attorney, suggested by him, to act in their behalf.....	75
offer of attorney for bankrupt to file proofs of creditors' claims and to collect and remit their dividends free of charge should not be made to creditors represented by counsel; nor should it be made to any creditor without clear disclaimer of seeking to represent creditors as attorney, for such position would be inconsistent .....	94
<i>Attachment:</i> an attorney should not accept employment to levy an attachment against the funds of a client, while his employment by the latter continues .....	20
an attorney who has negotiated a settlement for a client, may without impropriety attach the fund to secure payment of his fees, where the client is trying to remove the fund to avoid payment, and the knowledge of the fund is not the result of a confidential communication .....	196
<i>Bankruptcy:</i> creditors' attorney may at their solicitation vote their claims for his own election as trustee.....	153

	Question
<i>Borrower:</i>	
a lawyer should not be guided by selfish motives in exacting terms from a borrower for the extension of a loan by his client; his conduct should be dictated by his client's interests and not by his own; he should not demand a portion of the brokerage as a condition of allowing the borrower, a mortgagor, to place the insurance, or reject a policy in order to secure the brokerage.	112
<i>Clerk:</i>	
of lawyer of assignee for creditors should not purchase from the assignee claims of the estate.....	116
having purchased he should regard the proceeds of the claim as a trust fund..... (See also <i>supra</i> , p. 33, <i>infra</i> , p. 59.)	116
<i>Compensation:</i>	
a lawyer for a purchaser may properly share the fees of the seller's broker, with the knowledge and consent of both vendor and vendee, known to each other.....	166
but a lawyer should not put himself in a position where the conditions of his compensation may interfere with the full discharge of his duty to his client.....	166
a lawyer should not contract for compensation measured by results to his client in securing customers, where the results tempt him to color his opinions or computations in order to secure the customers .....	175
a lawyer who receives a part of the compensation paid by his client to another lawyer, should advise his client of the fact; and the client should not be deceived by the concealment of any fact concerning the receipt by his lawyer of a share of the clients' disbursements or the amount of the disbursements....	180
a lawyer should disclose to his client every fact known to him which might affect the reasonableness of charges in which the lawyer shares; he should not participate in the fees of another lawyer, and conceal the fact from his client, while making a separate charge for his own services.....	184
nor should he conceal the fact of his separate charge from the other lawyer in whose fee he participates (majority opinion).... (See also <i>supra</i> , pp. 34, 44, <i>infra</i> , p. 63.)	184
<i>Confidential Communications:</i>	
a client who brings a suit for rescission of a contract on the ground falsely asserted, that he has been misled by his attorney, thereby waives his privilege, and then his attorney may properly disclose to counsel for the adverse party the communications which he actually made to his client.....	218
from a client should not be utilized by an attorney against his client, for his own benefit..... (See also <i>supra</i> , p. 47, <i>infra</i> , pp. 71, 77.)	44
a lawyer, who is employed by another lawyer, should not disclose to a third person with whom he is dealing in behalf of a client of his employer, that the client and his employer are in dispute over compensation; and utilize the fact to secure the third person's business for himself.....	59

## Question

a lawyer may not properly disclose to police officials his knowledge of the present whereabouts of his client, a confidential communication from the latter, though he has fled from the jurisdiction while under a criminal charge.....	70
a lawyer, in the employ of another lawyer guilty of dishonest practices upon his clients, and of grossly improper professional practices, should not only leave the employment but should lay the facts before a proper committee of a bar association.....	78
do not preclude a lawyer from disclosing that his client contemplates the commission of a crime.....	84
a lawyer consulted in a private interest to appear at a public hearing in the guise of a citizen and taxpayer, is under no duty to conceal the fact.....	139
a member of a legal advisory board under the selective service law and regulations may disclose to the local board information received from the registrant tending to establish his correct classification, though it contradicts his answers to his questionnaire or is deliberately withheld or concealed by him. The lawyer is not the registrant's attorney.....	154
it is impolitic for the lawyer in such case to make secret report to the local board without disclosing the fact to the registrant, and counselling and affording him an opportunity to explain or modify his answers to accord with the truth.....	154
a lawyer having learned the business matters of a client in the course of his employment, cannot properly accept employment from another against such client to enforce rights based on such matters, though he has independent sources for such information.	157
a lawyer for a foreign government now at war, should not disclose to the Attorney-General of New York confidential information received by him in the course of his former employment, during peace, without asserting that it was received in confidence; he may then abide the determination of the tribunal or official to whom the solution of the question may be committed by statute	167
when called upon to disregard the privilege of a client, because of war, an attorney should assert the privilege; but he may with propriety comply with the determination of the functionary charged with the administration of law, acting under color of his office .....	168
if the attorney desires to test the validity or interpretation of the law, under which the demand of disclosure is made by refusing to answer and abiding the consequence, he may do so without professional impropriety.....	168
a lawyer should not without the consent of his client disclose to the United States authorities, information confided to him by the client that he has paid money for preferential treatment in military service .....	169
a lawyer for both husband and wife, but consulted confidentially by the wife in respect to her will disposing of her property derived from the joint labors of husband and wife, cannot properly warn her husband of her intent.....	190
nor should he voluntarily make a suggestion to the husband that such intent is possible (derived from his confidential knowledge) .....	190

but, if the husband consults him, in respect to his (the husband's) future conduct, the lawyer may with propriety advise him of the legal incidents of his transfer to his wife of the fruits of his labor ..... 190

a lawyer is not released from the obligation to keep his client's confidential communications inviolate, by the termination of his employment ..... 207

nor is he released thereby from his obligation not to use the information so obtained, in hostility to his former client ..... 207

a lawyer who has secured indulgence on account of his ignorance of his client's whereabouts, and who then learns it in confidence, should, in case the benefit so obtained, continues, advise counsel for the adverse party, and in a proper case, the court, that he now knows his client's whereabouts, but that it has been disclosed to him in confidence..... 217

(See also *infra*, p. 71.)

*Disclosure:*

where one employs a lawyer to draw a deed to another, who imposes trust in the lawyer, the latter should disclose to both a defect in the title known to him; or if he is not acting for the proposed grantee, he should only continue to act for the grantor after advising the grantee to secure separate counsel..... 90

a lawyer may properly accept employment from a guardian to represent his ward in a matrimonial action, though the lawyer's compensation is paid to the guardian by the adult spouse, provided the fact is disclosed to the court..... 128

a lawyer consulted in a private interest to appear at a public hearing in the guise of a citizen and taxpayer (and refusing so to do) may use his discretion whether he will disclose the fact that his employment was so attempted..... 139

having refused such employment, he may properly discuss the public question involved, expressing his personal views, without disclosing that his employment in the private interest was sought and refused .....

of information received by a member of a legal advisory board under the selective service law and regulations from a registrant, to the local board is a duty; he cannot properly aid the registrant to deceive the local board; but he should counsel the registrant of the duty of the latter to make true answers, to enable him to explain; and the lawyer should not secretly inform the local board without fair disclosure to the registrant..... 154

a lawyer who discovers that false testimony has resulted in an advantage to his client, and who has been unable to induce his client to forego the advantage should acquaint the injured party with the falsity .....

(See also *supra*, pp. 29, 45, 58, *infra*, p. 71.)

*Divorce:*

the attorney for one spouse should not be selected by the other or his attorneys .....

(See also *supra*, pp. 29, 34, *infra*, p. 77.)

*Dummy:*

it is not necessarily improper for a lawyer to permit his client to act as a dummy in a transaction involving a loan upon bond and mortgage upon real property..... 30

<i>Duty to Client:</i>	Question
does not require continuation of employment, after the payment of a retainer, when the client ignores all communications from the lawyer .....	15
in such case the lawyer may retire after fair notice to the client and an opportunity to employ other attorneys.....	15
it is improper for a lawyer to withdraw upon the eve of trial for non-payment or failure to give security for his compensation and thereupon to refuse to consent to a substitution of attorneys or to deliver essential papers unless his demand is complied with.	18
an attorney should not, while his employment continues, attach the funds of his client nor accept a retainer against him.....	20
a lawyer should explain to his client, selected as a "dummy" in a real estate transaction, the liability which he incurs.....	30
when client makes his attorney's position intolerable, the latter may apply to the court on notice, to permit him to withdraw as attorney, but until relieved by the court, the attorney should take proper steps to protect the interests of his client in litigation .....	55
does not require attorney to deliver to client money collected by attorney, where party paying claims over-payment and demands return, and attorney withholds, and presses suit which will determine the disputed question.....	60
if attorney accepts employment to enforce usurious claim, he should advise his client that the defense of usury may be set up and if established may defeat the claim.....	61
counsel for a municipal body should not advise where he has a conflicting personal interest in the question involved.....	97
a lawyer cannot properly accept employment from a second client to collect for the latter money which the lawyer has col- lected under employment from another client and has not re- mitted, and which his first client has assigned to a debtor of the second client; the lawyer's duty to the first client is not per- formed until he has remitted the money to the latter or his assignee .....	129
a lawyer may not properly prepare and witness the execution of a will and afterward accept employment to contest the will on the ground of the incompetency of the testator.....	156
a lawyer should not advise the employment of a company in which he has a personal interest, for the purpose of making in- vestments for a client, without fully and fairly informing his client of his interest.....	213
a lawyer who has learned only from his client of his presence within the jurisdiction, in order to attend to matters in litigation in which the lawyer is employed in his behalf, should not utilize this knowledge of his presence to subpoena the client without his consent to testify in another litigation in behalf of another client, in which the first mentioned client is a necessary witness.	241
(See also <i>supra</i> , pp. 45, 47, <i>infra</i> , pp. 57, 61, 68, 71, 81, 82.)	
<i>Employment:</i>	
the acceptance of employment to represent conflicting interests is improper .....	5

it is improper for a lawyer to accept a retainer against his former employer involving matters of which he might have obtained knowledge while in said employment and by reason thereof .....	11
where a rule of court safeguards the appointment of counsel for Receivers in Bankruptcy, it is not necessarily improper for the attorney for the petitioning creditors to act as counsel for the Receiver; nor for him to divide his fees with the counsel for another petitioning creditor.....	22
of two members of a partnership on opposite sides of the same litigation—when discovered by the partners, they are both disqualified from acting thereafter for either party.....	33
it is not unprofessional to accept employment from one spouse to urge the other to enforce his rights already accrued to sue the client for divorce.....	37
an attorney for an administrator may properly accept employment against one of the next of kin of the decedent and in pursuance of such employment seek to enjoin the next of kin from disposing of his interest in the decedent's estate.....	63
a lawyer may properly advise both of two successive husbands of the same wife respecting the legality of her marriage to each of them, and charge a fee to each.....	99
a lawyer may properly accept a retainer from one of two successive husbands of the same woman to procure a decree of annulment upon valid grounds, though the other husband contributes in order to remove the prior marriage as an obstacle to the later marriage .....	99
an attorney may properly, in behalf of an indemnitor, defend an action against the person indemnified, notwithstanding the latter is suing the indemnitor, but the performance of his duty to the person indemnified is not to be affected by the interests of the indemnitor .....	119
a lawyer for a creditor may not properly accept employment from his debtor to arrange an extension with other creditors, exacting as a condition of such employment that his creditor client's debt be first paid in full; the debtor is entitled to impartial counsel and fair representation to the other creditors....	123
in a matrimonial action, it is not improper for a lawyer to accept employment from a guardian to represent an infant ward, though the lawyer's compensation is paid to the guardian by the adult spouse, provided the fact is make known to the court.....	128
a lawyer cannot properly represent two clients whose interests are adverse in respect to the same subject matter; when such a situation arises he should advise the second that his previous professional connection is inconsistent with the further representation of the second.....	129
a lawyer should not accept professional employment involving the construction of a contract drawn by him for a former client, which brings him into a position adverse to the interests or claims of his former client.....	151

a lawyer employed by a wife to prosecute her husband may accept employment from the husband and wife to defend her husband against another charge, the first charge being first withdrawn .....	152
a lawyer may properly accept employment from two contracting parties to draw a contract for and to advise both unless the circumstances suggest to him that the proper protection of either requires independent counsel .....	155
a lawyer should not accept employment to enforce rights against a former client based upon business matters of the latter learned by the lawyer while in his professional employment, even though the lawyer has independent sources of information.....	157
a lawyer for a judgment creditor may properly accept employment from the debtor to enforce the debtor's claim against a third person (unless particular circumstances require that the debtor have independent counsel).....	159
while it is not necessarily improper for a clerk of the counsel for a vendor to accept, with the consent of the vendor and his counsel, a retainer from the purchaser, to act as his counsel in the transaction, the practice is not to be commended, because of its obviously possible dangers.....	200
while it is not necessarily improper for him to continue as counsel for the purchaser, after he ceases to be clerk for the vendor's counsel, he should decline or relinquish the employment, if he knows or discovers that because of his former relation, or of any confidential information which he is not free to impart to the purchaser, he cannot do his full duty to the latter.....	200
he should not continue the employment if he is not entirely free or willing to do his full duty to the purchaser.....	200
the employment should not be accept unless all of the consenting parties appreciate the implications of their consent.....	200
the rendition of services by an attorney to one party to a litigation thus establishing a relation of trust and confidence, precludes the acceptance of employment by such attorney in any subsequent phase of the same litigation from an adverse party..	202
a lawyer who has been consulted and has advised a person as his client, should not thereafter, though no longer employed by such person, accept employment in the same matter antagonistic to such person's interest .....	207
acceptance by lawyer for an executor of employment from executor's wife in an action for divorce, is disapproved because such adverse employment is too apt to conflict with the essential confidence which the relation of attorney and client implies and requires; the fact that the executor is one of a number does not change the conclusion .....	232

(See also *supra*, p. 30, *infra*, p. 121.)

it is not improper for a lawyer to accept employment in behalf of a wife to procure a decree of divorce from her husband, though he has formerly been the attorney for her husband in an unrelated matter, under employment now ended.....	240
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For collation of the English views on matters cognate to this Canon, see subdivisions V and VI, below, pp. 219, 225 *et seq.*, and for English views respecting the nature and legal incidents of Retainers and Fees to Counsel, see p. 218.

## 7. PROFESSIONAL COLLEAGUES AND CONFLICTS OF OPINION.

A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

### ANNOT.

Change and substitution of attorneys, see Attorney and Client, Cent. Dig. §§ 110-131; Dec. Dig. §§ 75, 76.

The *Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, has expressed the following views:

<i>Adverse Attorney:</i>	Question
an attorney should not settle a controversy with an adverse party without consulting or informing the latter's attorney.....	71
an attorney should not procure from an adverse party a stipulation which the latter's counsel refuses to make.....	85
settlements of a judgment by plaintiff's attorneys with a willing judgment debtor against the wishes of his attorneys who insist that their bill must first be paid, is not improper.....	93
attorney for bankrupt should not offer to file proofs of claim and collect and remit dividends thereon for creditors represented by counsel .....	94

	Question
<i>Associate:</i>	
it is not improper to inform a client that the conduct of a person proposed by the client as a professional associate, has been unprofessional and that therefore such association is not desired..	59
<i>Attorney:</i>	
a lawyer should not accept employment to advise another attorney's client respecting pending litigation conducted by the latter attorney, without his knowledge and consent so long as he remains attorney in the case.....	204
<i>Competition:</i>	
with former partner to secure his former clients, by offering to serve for smaller fees, is reprehensible.....	189
<i>Counsel:</i>	
an attorney should not accept employment as counsel to participate in a trial, in which another attorney is already retained, without communicating to the latter the fact of his retainer in order to allow him to determine his course.....	176
(See also <i>infra</i> , p. 145.)	
where a local attorney of record in a litigation is employed on the recommendation of non-resident legal counsel of a non-resident defendant served outside of the jurisdiction, and an offer of settlement is made to such attorney and reported by him to such counsel who rejects it without communicating it to his client, it is not the duty of the local attorney to report the offer direct to the client. If the local attorney is of the opinion that it is in the client's interest that the offer should be submitted to the latter, he should so advise the counsel, and if counsel still refuses, the attorney should advise client and counsel that a difference of opinion has arisen, and seek instructions from the client, making such explanation to the client as may enable him to give such instructions.....	236
it is improper for a lawyer to accept a retainer against his former employer involving matters of which he might have obtained knowledge while in said employment and by reason thereof... (See also <i>infra</i> , p. 102.)	11
<i>Employer:</i>	
it is improper for a lawyer, in the employ of another lawyer, to suggest to one with whom he is dealing by reason of that relationship, that his term of employment is about to end, and that the business should be deferred until the employment is at an end, and then transacted with the employee.....	59
it is improper for such employee to inform the one with whom he is dealing in behalf of a client of his employer, that the client and his employer have disagreed.....	59
it is unprofessional and disloyal to solicit employment from the clients of a former employer; but they may be notified by a simple card or letter of announcement that the employees has formed a firm of his own.....	109
For English views upon Counsel, see below, subdivisions V and VI, pp. 218, 225 <i>et seq.</i>	

## 8. ADVISING UPON THE MERITS OF A CLIENT'S CAUSE.

A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

### ANNOT.

Negligence of attorney in advising client, see Attorney and Client, Cent. Dig. §§ 221, 222; Dec. Dig. § 109.

The Canon relates to advice upon the events and result of litigation; and its adjustment and settlement. But experience demonstrates that other ethical questions arise upon advice and its native and cognate matters; there are illustrated by some of the following:

In answer to inquiry the *Committee on Professional Ethics of the New York County Lawyers' Association* has expressed the following views:

<i>Adverse Party:</i>	<i>Question</i>
Canon 8 is designed primarily to guide an attorney in advising his own client; it is hardly meant to be a basis for compelling the attorney for an adverse party to submit to his client a settlement which the latter attorney believes should not be considered .....	235
<i>Advice:</i>	
it is not improper for a lawyer to advise a client of the legal effect of a decree (prohibiting remarriage).....	12
an attorney may not properly advise the unjust destruction of property rights .....	21
to a client to violate a penal statute is improper.....	27
a lawyer should not advise disobedience to the subpoena.....	135
it is not improper for a lawyer to advise his client not to give or to allow its employees to give voluntary information to be used in litigation against it.....	135

when an offer is made to purchase from a judgment creditor a joint judgment against two tort feasors and the creditor's attorney suspects that the motive actuating the offer is the desire of the insurer of one of the debtors to enforce the judgment against the other and then to claim that this satisfaction extinguishes the debt and releases the obligation of the insurer, the attorney should put the facts before the client for the exercise of his own moral judgment; but the suspected motive is not sufficient reason to deter the lawyer from advising the client to accept the offer to sell the judgment, if he is so inclined.....	162
advice by a lawyer to inquirers through a newspaper, which employs him to answer inquiries on law in a column conducted by him, is not to be approved; it tends to diminish his sense of personal responsibility to the inquirer, to whom he does not sustain personal relations, and introduces an intermediary who furnishes the professional service.....	203
a lawyer may advise his client of his opinion respecting the client's statutory duty; but it is not professionally proper for him to devise a plan to enable such client, an executrix, the widow and residuary legatee of the testator, to defeat the rightful claims of a creditor .....	211
(See also <i>infra</i> , p. 70.)	
<i>Collusion:</i> an attorney should not collude with his client to promote the running of a statute of limitations; nor accept a retainer or compensation therefor from an insurer of his client.....	53
<i>Deception:</i> a client should not be deceived or misled by the concealment from him by the lawyer of a fact which requires a disclosure for his proper enlightenment or to enable him to make a fair contract with his lawyer.....	180
<i>Duty to Client:</i> a lawyer is under no duty to submit to his client a proposition in fraud of justice, made to the lawyer.....	9
nor should he assist his client to avail himself of corrupt activities .....	9
if attorney accepts employment to enforce usurious claim, he should advise his client that the defense of usury may be set up and if established may defeat the claim.....	61
a lawyer may not with propriety deceive an incompetent client under the advice of his physician that it will benefit him.....	87
a client is entitled to have a fairly debatable question of law presented from the angle of his side, though the lawyer may think and advise that it is doubtful.....	95
(See also <i>supra</i> , pp. 45, 47, 51, 61, 68, 71, 81, 82.)	

## 9. NEGOTIATIONS WITH OPPOSITE PARTY.

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter

with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

#### ANNOT.

Duties and liabilities of attorney to adverse parties and third persons, see Attorney and Client, Cent. Dig. §§ 38, 39, 61; Dec. Dig. §§ 26, 38.

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiry, has expressed the following views:

<i>Adverse Attorney:</i>	Question
an attorney should not settle a controversy with an adverse party without consulting or informing the latter's attorney.....	71
an attorney should not procure from an adverse party a stipulation which the latter's counsel refuses to make.....	85
settlement of a judgment by plaintiff's attorneys with a willing judgment debtor against the wishes of his attorneys who insist that their bill must first be paid, is not improper.....	93
attorney for bankrupt should not offer to file proofs of claim and collect and remit dividends thereon for creditors represented by counsel .....	94
<i>Adverse Party:</i>	
if a lawyer is doubtful whether a stipulation for judgment was the result of mutual mistake as to a material fact, he should not enter judgment thereon without opportunity to the adverse party to seek relief on that ground.....	181
(See also <i>supra</i> , pp. 46, 56.)	
negotiation by lawyer for settlement of pending litigation, directly, with adverse party when the latter's counsel refuses to submit to his client an offer of settlement because he regards it as inadequate and unfair, is improper.....	235
a defendant's attorney should not without the knowledge of the plaintiff's attorney participate in effecting a settlement agreed upon between the parties; but where the plaintiff's attorney knows of the settlement and refuses his consent because of a contingent fee agreement, the defendant's attorney may assist his client to carry into effect a settlement agreed upon between the parties, where there is no intent to defraud, but he cannot with propriety advise the plaintiff. In such case the usual obligation to deal with the opposing attorney is rendered unnecessary. ....	242
<i>Disclosure:</i>	
an attorney may properly disclose admissions (not privileged in law) made to him by representatives of an adverse party....	64
(See also <i>supra</i> , pp. 29, 45, 50, <i>infra</i> , p. 71.)	
<i>Witness:</i>	
it is not improper for a lawyer of an accused to interview the employer of the accuser to ascertain the facts.....	233

## 10. ACQUIRING INTEREST IN LITIGATION.

The lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting.

### ANNOT.

Right of attorney to purchase demands for suit, and effect thereof as ground for disbarment, see Attorney and Client, Cent. Dig. §§ 26, 51, 239-263; Dec. Dig. §§ 18, 38, 122-125.

Champertous agreements, see Champerty and Maintenance, Cent. Dig. §§ 36-44, 47-51; Dec. Dig. § 5 (6, 8).

*The Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, has expressed the following views:

Purchase:	Question
of judgments at a discount by a lawyer for the purpose of enforcing them is improper.....	160

See Canon 13, respecting Contingent fees, *infra*, p. 65.

A statute of New York Penal Laws S. 274 prohibits the purchase of certain causes of action by an attorney for the purpose of suing thereon.

For certain English views, see below, subdivision VI, p. 241, items 398, 400.

## 11. DEALING WITH TRUST PROPERTY.

Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

### ANNOT.

Authority of attorney as to disposition of client's money or other property, see Attorney and Client, Cent. Dig. § 143; Dec. Dig. § 80.

Accounting and payment to client, see Attorney and Client, Cent. Dig. §§ 232-238; Dec. Dig. §§ 116-121.

The Canon relates to money of a client; the answers to some of the following inquiries indicate that an attorney owes duties to his client in respect to money received from other sources.

*The Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, has expressed the following views:

Clerk:	Question
a lawyer employed by another lawyer guilty of dishonest practices against his client, should leave the employment and lay the facts before a proper committee of a bar association.....	78

of lawyer or assignee for creditors should not purchase from the assignee claims of the estate.....	116
having purchased he should regard the proceeds of the claim as a trust fund.....	116
(See also <i>supra</i> , p. 47.)	
<i>Client:</i>	
a lawyer may properly turn over to his client (to whom he makes no charge for his own service) a commission which he receives from a title company for its examination of title and issue of a policy; though the company makes such allowance only to lawyers and not to others; but, if the lawyer believes the company would not acquiesce, he should inform it, in order to avoid deceiving it.....	194
(See also <i>supra</i> , p. 48.)	
<i>Collection Agency:</i>	
a lawyer making a collection entrusted to him, by a collection agency, as the authorized agent of its patron, may properly remit the proceeds to the agency.....	51
(See also <i>infra</i> , pp. 96, 100, 111.)	
<i>Commissions:</i>	
a lawyer may accept commissions or a rebate from the charges of printers, stenographers, auctioneers or others, for the credit of the client and with the clients' knowledge.....	124
a lawyer may properly accept customary commissions from a title company and pay them to his client to diminish the cost of his title insurance, or retain the commissions with his client's knowledge and consent .....	138
a lawyer should not refuse such commissions when tendered by the title company; his duty to his client requires him to accept it in order to reduce the client's expense.....	138
upon the client's request a lawyer may properly turn over to his client (to whom he makes no charge for his services) a commission received by him from a title company for the examination of a title and the issue of its policy, though it allows commissions only to lawyers, and not to others. But, if the lawyer believes the company would not acquiesce, he should inform it to avoid deception.....	194
(See <i>infra</i> , p. 62.)	
<i>Duty to Client:</i>	
when client makes performance of attorney's contract of employment impossible, attorney may upon notice apply to court for leave to withdraw, but until relieved he should take proper steps to protect the client's interests in litigation.....	55
does not require attorney to deliver to client money collected by attorney, where party paying claims over-payment and demands return, and attorney withholds, and presses suit which will determine the disputed question.....	60
a lawyer may withhold his client's money, if satisfied that he has a lien or counterclaim, but should not mingle it with his own..	66
and he should hold it in a special account until the controversy is ended, so as to be able to account and pay over if his client should prevail .....	66
a lawyer may not properly refuse to honor a client's order for the delivery of the client's property in his possession, because the client has fled from the jurisdiction while under a criminal charge .....	70

a lawyer may not properly disclose to police officials his knowledge of the whereabouts of a client, which he received from the client in confidence, though the client has fled from the jurisdiction while under a criminal charge.....	70
a lawyer cannot properly accept employment from a second client to collect for the latter money which the lawyer has collected under employment from another client and has not remitted, and which his first client has assigned to a debtor of the second client; the lawyer's duty to the first client is not performed until he has remitted the money to the latter or his assignee .....	129
attorney for purchaser may, without impropriety, receive part of the fees of the seller's broker, with the knowledge and consent of both vendor and vendee known to each other.....	166
attorneys should not put themselves into positions where the conditions of their compensation may interfere with the full discharge of their duties to their clients.....	166
a lawyer who receives a part of the compensation paid by his client to another lawyer, should advise his client of the fact; and the client should not be deceived by the concealment of any fact concerning the receipt by his lawyer of a share of the clients' disbursements or the amount of the disbursements.....	180
the committee expresses no opinion on a customary basis of division .....	180
a lawyer sharing the fees of another lawyer employed by him for a client should so advise his client.....	180
where a forwarding attorney agrees with his client upon a fixed basis of compensation and engages a distant attorney to assist him, he owes his client no accounting of the division of fees, unless a disclosure is necessary for his proper enlightenment or to enable him to make a fair contract with his lawyer; the client should not be deceived or misled by concealment of the division.	180
sharing by the attorney of record of a judgment creditor, of the fees of a lawyer who solicits employment to enforce the judgment, should be with the knowledge of the client, and based upon services or responsibility.....	227

(See also *supra*, pp. 45, 47, 51, 57, *infra*, pp. 68, 71, 81, 82.)

For English views, see below, subdivision VI, pp. 237, 239, 240, items 346, 357, 372, 373.

## 12. FIXING THE AMOUNT OF THE FEE.

In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

#### ANNOT.

Right of attorney to compensation, contracts therefor and value and amount thereof, see Attorney and Client, Cent. Dig. §§ 292-350; Dec. Dig. §§ 130-145, 151, 152, 154, 155.

The Canon relates to the amount of the fee; but many practical questions have arisen with relation to fees which are not confined to their amount or the method of computing them. The following answers are illustrations:

By the *Committee on Professional Ethics of the Association of the Bar of the City of New York:*

<i>Commissions:</i>	Question
it is not improper for a lawyer to receive commissions from title, mortgage or bond companies, provided they are paid for services actually rendered by him on behalf of his client, and the facts are disclosed to the client.....	5
demand by attorney that broker divide commissions with him, on pain of advising client not to complete transaction, is unprofessional .....	11
(See <i>supra</i> , p. 60.)	

<i>Compensation:</i>	
a lawyer should not charge a fee in excess of that allowed by statute for prosecuting a claim under the Workmen's Compensation Law .....	6

## Question

it is not professionally improper for a lawyer who is reasonably satisfied that he has a retaining lien, to retain his client's papers until compensated ..... 15

it is not improper for an attorney to receive compensation from an adverse party for inducing his client to relinquish his rights for a sum of money, if the client knows and consents; and the lawyer is satisfied that it is not improper..... 19

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiries, has expressed the following views:

## Compensation:

a lawyer may without impropriety agree with his client for compensation to him for his non-professional technical assistants upon a per diem basis, though they are employed by him on a salary less than such per diem charge (no deception being practiced on the client)..... 142

a reasonable charge for professional services is not improper, in securing an allotment for the neglected wife of an enlisted soldier ..... 173

or for the former wife of a deceased soldier from whom she procured a divorce ..... 173

(See also *supra*, pp. 34, 48, 62, *infra*, p. 66.)

## Fees:

where a rule of court safeguards the appointment of counsel for a receiver, it is not necessarily improper for an attorney who is selected as such counsel, and who acted also as counsel for petitioning creditors to divide his fees with counsel for another petitioning creditor, with the knowledge of the clients..... 22

division of fees for the legal services of counsel to an executor with the executor, who is not entitled to receive fees for legal services, is improper..... 26

concealment of such division, from the court which allows the fees to the counsel is improper..... 26

their division between lawyers should be based upon sharing professional responsibility or legal services..... 42

no division of a lawyer's fees should be made except with a member of the legal profession associated in the employment as a lawyer .....

42

a division based upon securing employment for the lawyer is improper .....

42

division between lawyer and collection agency, is improper...47-ii-a

a lawyer may receive a salary from a collection agency for services rendered to it; but he should make his charge to its patron, for his services to the patron; and should not permit the agency to charge its patron for his services.....47-ii-b

may not be divided with a trade organization, by a lawyer...47-iii-b

any compensation paid by the lawyer to the trade organization for its services to him, should avoid being a cloak for compensation for the solicitation of business for the lawyer, or for an unequal preference to members of the organization.....47-iii-c

a lawyer should not participate in an emolument resulting from an unlawful act.....	47-iv-a
it is improper to measure a lawyer's payment for the appearance of his name in a law list, by the amount of his fees resulting therefrom.....	47-ix-a, c
it is grossly improper for referees to sell, to receive a part of the auctioneer's fee .....	48
an agreement between a receiver and his counsel for a division of their fees is improper.....	56
a lawyer should not divide his professional fees with a collection agency .....	74
a lawyer should make a reasonable charge for his services to his client in such manner as to disclose his identity and relation, and to prevent an intermediate agency from concealing his charge or covering it in its own charge.....	74
any division of fees with another lawyer should be based on the sharing of professional responsibility or service and a division merely for the recommendation of employment is improper...	82
a lawyer should not divide fees for professional services with a layman, nor fees for collection though made by him without bringing suit or appearing in court.....	98
a lawyer may properly advise both of two successive husbands of the same wife respecting the legality of her marriage to each of them and charge a fee to each.....	99
he may properly accept a retainer from one of them to obtain an annulment on lawful grounds, to which the other of them contributes, in order to remove the prior marriage as an obstacle to the later .....	99
it is improper for a lawyer, without the knowledge and consent of his client to share the fees of an auctioneer whom he employs for his client; and irrespective of the client's knowledge and consent it is beneath the proper professional dignity to share the fees .....	111
a lawyer should not demand or receive fees from another for inducing his client to extend a mortgage; but he may receive reasonable compensation for his actual services.....	112
the division of the commissions of a trustee in bankruptcy and the fees of his attorney, between them, is improper.....	120
a lawyer should not accept employment from one in the collection business to institute suits and draw papers for patrons of the latter for fees to be paid by the latter.....	121
a lawyer should not accept employment from a collection agency which fixes his fee and exploits his services for its own profit..	125
a lawyer should not accept employment from a justice of the peace of another state, not admitted to practice law, and share with the latter the compensation for the collection.....	130
a division of fees should be based on sharing professional responsibility or legal services.....	82, 180, 184
there should be no division except with a member of the legal profession associated in the employment as a lawyer.....	180

the committee expresses no opinion on a customary basis of division .....	180
a lawyer sharing the fees of another lawyer employed by him for a client should so advise his client.....	180
where a forwarding attorney agrees with his client upon a fixed basis of compensation and engages a distant attorney to assist him, he owes his client no accounting of the division of fees, unless a disclosure is necessary for his proper enlightenment or to enable him to make a fair contract with his lawyer; the client should not be deceived or misled by concealment of the division. ....	180
the division of fees for legal services by a lawyer with a registered patent attorney, who is not a lawyer, is improper, as is the rendition of a bill for such fees, in the name of a firm composed of the lawyer and the patent attorney; as is also, the formation of such partnership for the rendition of such services (majority opinion) .....	209
sharing by the attorney of record of a judgment creditor, of the fees of a lawyer who solicits employment to enforce the judgment, should be with the knowledge of the client, and based upon services or responsibility.....	227
an attorney may, without impropriety, after an interlocutory decree procured by him for a wife, accept her husband's offer, made with the consent of the wife, but without the attorney's previous knowledge or procurement, to pay him the amount of his fees, previously agreed upon between the attorney and the wife, and he may properly proceed to enter the final decree—the attorney being satisfied from previous investigation that the offense was not collusive, and that the payment will not impair the husband's ability to pay alimony for the support of the wife and a child.....	229

(See also *supra*, pp. 34, 44, 48, 62, 63.)

For certain English views, see below, subdivision V, pp. 218, 219, and subdivision VI, pp. 243, 248, 254, 255, 257, items 455, 456, 1115, 1175, 1180, 1200, 1202.

### 13. CONTINGENT FEES.

Contingent fees, where sanctioned by law, should be under the supervision of the court, in order that clients may be protected from unjust charges.

#### ANNOT.

Validity and effect of agreement for contingent fee, see Attorney and Client, Cent. Dig. §§ 351-357; Dec. Dig. §§ 146-150.

Agreement for contingent fee as constituting champerty, see Champerty and Maintenance, Cent. Dig. §§ 22-51; Dec. Dig. § 5.

The *Boston Bar Association* and the *Massachusetts Bar Association* have substituted the following Canon:

A lawyer should not undertake the conduct of litigation on terms which make his right to reasonable compensation contingent on his success, except when the client has a meritorious cause of action but no

sufficient means to employ counsel unless he prevails; and a lawyer should never stipulate that in the event of success his fee shall be a fixed percentage of what he recovers or a fixed sum, either of which may exceed reasonable compensation for any real service rendered.

Such practices tend to corrupt and discredit the Bar. Lawyers who try to get business by charging nothing unless they succeed, even though they leave the size of their fees to be determined by the amount and character of their services, are constantly tempted to promote groundless and vexatious suits. Those who go further and bargain that, if successful, their fees shall be fixed sums or percentages are not only apt to become public pests, but are in constant danger of abusing or betraying their own clients. When making such a bargain the lawyer's superior knowledge and experience give him an advantage which tempts him to overreach his client. By making it, he, in effect, purchases an interest in the litigation. Consequently, unhappy conflicts between his own and his client's interest, in respect to the settlement or conduct of the suit, are always likely to arise; his capacity to advise wisely is impaired; and he is beset by the same temptations which beset a party to be dishonest in preparation and trial.

*The Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, has expressed the following view:

<i>Compensation:</i>	<i>Question</i>
a lawyer should not contract for compensation measured by results to his client in securing customers, where the results tempt him to color his opinions or computations in order to secure the customers .....	175
a lawyer for a defendant who disappears, and who is therefore not able to communicate with his client, is not to be deterred from taking proper steps to protect the client's interest by the fact that his compensation has failed.....	216
<i>Contingent Fees:</i>	
so long as the present practice (which finds some justification in meritorious cases undertaken on behalf of poor persons), prevails generally among members of the Bar in any community, the committee cannot assume to say that there is any impropriety in lawyers practicing in such community accepting such cases, when they are unsolicited.....	141
it is improper to measure a lawyer's payment for the appearance of his name in a law list, by the amount of his fees resulting therefrom .....	47-ix-a, c
For English views, see below, subdivision VI, pp. 238, 243, 248, items 351, 492, 1115.	

#### 14. SUING A CLIENT FOR A FEE.

Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

## ANNOT.

Right of action for fees, defenses and practice, see Attorney and Client, Cent. Dig. §§ 358-377; Dec. Dig. §§ 157-169.

The Committee on Professional Ethics of the Association of the Bar of the City of New York has answered:

<i>Duty to Client:</i>	Question
it is not improper for a lawyer, satisfied that he has a retaining lien, to retain his client's papers until he is compensated.....	15
<i>The Committee on Professional Ethics of the New York County Lawyers' Association,</i> in answer to inquiries, has expressed the following views:	
<i>Attachment:</i>	Question
an attorney should not accept employment to levy an attachment against the funds of a client, while his employment by the latter continues .....	20
an attorney who has negotiated a settlement for a client, may without impropriety attach the fund to secure payment of his fees, where the client is trying to remove the fund to avoid payment, and the knowledge of the fund is not the result of a confidential communication .....	196
<i>Lien:</i>	
a lawyer may properly retain a client's money as security for an equal amount of his disbursements for the client, whether incurred in the same or a different matter.....	7
but the lawyer should not so apply his client's money so retained, as to prevent his ability to return it, in case it be adjudged that his claim is invalid.....	7
a lawyer may withhold his client's money, if satisfied that he has a lien or counterclaim, but should not mingle it with his own..	66
and he should hold it in a special account until the controversy is ended, so as to be able to account and pay over if his client should prevail .....	66
<i>Papers:</i>	
an attorney's right to retain a copy of an answer, containing charges injurious to his client, and demanded by his client, presents a question of law, upon which the committee expresses no opinion .....	77

## 15. HOW FAR A LAWYER MAY GO IN SUPPORTING A CLIENT'S CAUSE.

Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of question-

able transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

#### ANNOT.

Nature of office of attorney and duty to follow client's instructions, see Attorney and Client, Cent. Dig. §§ 21, 220; Dec. Dig. §§ 14, 108.

Argument and conduct of counsel, see Criminal Law, Cent. Dig. §§ 1655-1693; Dec. Dig. §§ 699-730; Trial, Cent. Dig. §§ 267-316; Dec. Dig. §§ 106-133.

Answers of the *Committee on Professional Ethics of the Association of the Bar of the City of New York*:

*Evidence:* Question  
it is not improper for a lawyer to seek evidence in behalf of a client from the employer of one who accuses his client of an offence ..... 20

*Witness:* agreement with prospective witness to induce him to testify to facts which tend to disgrace him in case any suit is brought against him and client will indemnify him, should be disclosed to court and adverse counsel before he testifies ..... 8  
See *Duty to Client* (*supra*, pp. 45, 47, 51, 57, 61; *infra*, pp. 71, 81, 82.)

The *Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiries, has expressed the views collated under Canons 16, 18 and 19.

It has also expressed the following views:

*Judgment:*

*Question*

a lawyer who has taken notes in settlement of a suit with a stipulation for judgment in case of default should not assist a client to perpetrate a fraud by entering judgment, where the notes were based upon a misrepresentation of material fact by the client; if satisfied that his client has acted in bad faith he should withdraw; if doubtful, he should give the adverse party an opportunity to seek relief on the ground of mistake..... 181  
 (See also *infra*, p. 104.)

*Usury:*

an attorney may properly accept employment to enforce a usurious claim, as usury is a defense and may be waived..... 61

For English views, see below, subdivision VI, pp. 239, 253, items 359, 1171.

## 16. RESTRAINING CLIENTS FROM IMPROPRIETIES.

A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

### ANNOT.

Termination of relation by withdrawal of attorney, see Attorney and Client, Cent. Dig. § 121; Dec. Dig. § 76 (1).

The Committee on Legal Ethics and Grievances of The American Bar Association, in its annual report for 1924, reported adversely upon the following proposed resolution introduced by a member and referred to the committee:

*Be it Resolved* by The American Bar Association in regular convention assembled, that we voice our disapproval of the practice of attorneys acting as dummy or conduit through the medium of which property is unlawfully conveyed by will or otherwise in violation of express provision of a statute.

The example attached to the proposed resolution referred expressly to the following provision of New York law:

SECTION 17. *New York Decedent Estate Law.*—“No person having a husband, wife, child or parent living, shall, by his or her last will and testament devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation in trust or otherwise more than one-half of his or her estate, after the payment of his or her debts and such devise or bequest shall be valid to the extent of one-half and no more.” (Law 1860.)

The committee coupled with its adverse report upon the adoption of the resolution, its opinion as follows:

In the opinion of the committee, the right of the owner of property to dispose of it by gift or will in favor of individuals carries with it the right to dispose of it in favor of individuals who in his opinion will use it in the ways he would like to have it used, and neither the exercise of this right nor the acceptance of a devise, bequest or gift made pursuant thereto is contrary to law or good morals or public policy, and there is no reason why a member of the Bar should not accept such a devise, bequest or gift.

Of course, if the acceptance is upon a secret trust, to use the property for some purpose to which the owner could not legally direct its application and a member of the Bar conceals the secret trust or misrepresents its character, he is guilty of a violation of a fundamental rule of good morals.

*The Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, has expressed the view:

<i>Advice:</i>	<i>Question</i>
it is not improper for a lawyer to advise a client of the legal effect of a decree (prohibiting remarriage) .....	12
an attorney may not properly advise the unjust destruction of property rights.....	21
to a client to violate a penal statute is improper.....	27
a lawyer should not advise disobedience to a subpoena.....	135
it is not improper for a lawyer to advise his client not to give or to allow its employees to give voluntary information to be used in litigation against it.....	135
when an offer is made to purchase from a judgment creditor a joint judgment against two tort feasors and the creditor's attorney suspects that the motive actuating the offer is the desire of the insurer of one of the debtors to enforce the judgment against the other and then to claim that this satisfaction extinguishes the debt and releases the obligation of the insurer, the attorney should put the facts before the client for the exercise of his own moral judgment; but the suspected motive is not sufficient reason to deter the lawyer from advising the client to accept the offer to sell the judgment, if he is so inclined.....	162
a lawyer may advise his client of his opinion respecting the client's statutory duty; but it is not professionally proper for him to devise a plan to enable such client, an executrix, the widow and residuary legatee of the testator, to defeat the rightful claims of a creditor.....	211

(See also *supra*, p. 56, *infra*, p. 77.)

#### *Breach of Promise (to Marry):*

a lawyer who has taken notes in settlement of a suit with stipulation for entry of judgment in case of default, and who learns that his client was already married should not assist his client to perpetrate a fraud by entering judgment. If satisfied that his client acted in bad faith, he should withdraw from the cause; if he is not so satisfied, he should afford the adverse party an opportunity to seek relief on the ground.....

181

	Question
<i>Corrupt Practices:</i>	
a client's interests or instructions do not justify corrupt practices .....	9
and a lawyer should not assist his client to avail himself of corrupt activities .....	9
<i>Confidential Communications:</i>	
a client's threat of bodily harm to another is not a privileged communication and the lawyer may properly warn the person threatened .....	13
(See also <i>supra</i> , p. 48.)	
<i>Disclosure:</i>	
when an attorney is sued as the owner of property belonging to his client, he should not collude with his client or the client's insurer, to promote the running of a statute of limitations against the owner; he should promptly and affirmatively disclose that he is not the owner; but he is under no duty to disclose that his client is the owner.....	53
(See also <i>supra</i> , pp. 29, 45, 50, 58.)	
<i>Duty to Client:</i>	
a lawyer is under no duty to submit to his client a proposition in fraud of justice, made to the lawyer.....	9
nor should he assist his client to avail himself of corrupt activities .....	9
(See also <i>supra</i> , pp. 45, 47, 51, 57, 61, 68, <i>infra</i> , pp. 81, 82.)	
<i>False Statement:</i>	
a lawyer should not seek to secure for his client relief predicated upon testimony known to him to be false.....	146
if a lawyer concludes that false testimony has been given in behalf of his client and that the further prosecution of the action would be an imposition on the court, and his client withdraws consent to his retirement or a dismissal or discontinuance, he should privately state to the court his desire to withdraw, with his reasons and ask that the cause be continued to enable his client to procure other counsel.....	146
a lawyer who discovers that false testimony has resulted in an advantage to his client, and who has been unable to induce his client to forego the advantage, should acquaint the injured party with the falsity.....	215
a lawyer may properly disclose the actual communication which he made to his client, when the client brings suit to rescind a contract, on the ground, falsely asserted, that he was misled by the lawyer.....	218
(See also <i>supra</i> , p. 30.)	
<i>Fraud:</i>	
a lawyer should not assist a client in perpetrating a fraud....	181
for instance, in advising an executrix to disregard the rights of a creditor of the testator or to resort to a trick or device to defeat them; or in devising a plan to enable the executrix to defeat them.....	211
For certain English views, see below, subdivision VI, pp. 235, 245, 246, items 333, 1087, 1088.	

## 17. ILL FEELING AND PERSONALITIES BETWEEN ADVOCATES.

Clients, not lawyers, are the litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

### ANNOT.

Conduct toward other attorneys, ground for disbarment, see Attorney and Client, Cent. Dig. § 61; Dec. Dig. § 38.

Use of abusive language and retaliatory statements and remarks by attorneys, see Trial, Cent. Dig. §§ 308, 310; Dec. Dig. §§ 126, 129.

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiry, expressed Competition:

competition with a former partner to secure his former client by offering to serve for smaller fees is reprehensible.....	Question 189
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Courtesy:

lack of courtesy to opposing counsel is not necessarily professional misconduct .....	41
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Testimony:

a lawyer should not be deterred by considerations of professional brotherhood from testifying, when requested, respecting the value of legal services.....	17
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(See also *supra*, p. 37.)

Threats:

an attorney should not threaten disciplinary proceedings against another attorney as a means of collecting money from the latter.	19
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(See also *supra*, p. 37.)

## 18. TREATMENT OF WITNESSES AND LITIGANTS.

A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or

indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

#### ANNOT.

Duties and liabilities to adverse parties and to third persons, see Attorney and Client, Cent. Dig. § 38; Dec. Dig. § 26.

Use of abusive language and retaliatory statements or remarks, see Trial, Cent. Dig. §§ 308, 310; Dec. Dig. §§ 126, 129.

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiry, expressed the view:

<i>Comment:</i>	Question
wanton, unnecessary, or unreasonable inquiry or comment upon the discreditable past of a witness or party is improper.....	43

<i>Witness:</i>	Question
the lawyer need not assume that the witness will not tell the truth; he cannot properly withdraw from the trial because his client insists upon the examination of the witness, though he believes the witness will not tell the truth unless paid.....	110
(See also <i>supra</i> , p. 37, <i>infra</i> , p. 82.)	

### 19. APPEARANCE OF LAWYER AS WITNESS FOR HIS CLIENT.

When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client.

#### ANNOT.

Competency of attorneys as witnesses, see Witnesses, Cent. Dig. §§ 79, 121-123; Dec. Dig. § 67.

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiries, expressed the view:

<i>Trial:</i>	Question
in general, a lawyer should not act as trial counsel, when he knows that he is a material witness for the adverse party.....	28
nor should trial counsel testify and argue as counsel upon the credibility of his own testimony; though there may be an exception to this rule where he is surprised at the trial respecting a matter previously admitted to him by representatives of the adverse party.....	64
(See also <i>supra</i> , p. 37; <i>infra</i> , <i>Witness</i> , p. 74.)	

*Witness:*

a plaintiff's attorney may, after a defendant's default, be a witness upon an inquest to establish the debt upon a promissory note .....	76
(See also <i>Trial, supra</i> , p. 73.)	

## 20. NEWSPAPER DISCUSSION OF PENDING LITIGATION.

Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement.

### ANNOT.

Publications relating to pending proceedings as constituting contempt, see Contempt, Cent. Dig. §§ 15, 16; Dec. Dig. § 9.

The relations of lawyers to newspapers have been the subject of certain inquiries which do not fall within the scope of this Canon.

The *Committee on Professional Ethics of the New York County Lawyers' Association* has, in answer to inquiries, expressed the views:

<i>Advertising:</i>	Question
it is highly improper for a lawyer to advertise that having severed relations with a former client, he is free to accept and prosecute claims against such former client.....	62
(See also <i>infra</i> , p. 95 <i>et seq.</i> )	

*Newspaper:*

there is no impropriety in the carrying as news of a list of patents, compiled from official sources, with the name of the lawyer who compiles it .....	174
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it is not proper for a lawyer to conduct a column in a newspaper answering inquiries respecting the legal rights of the inquirers; it tends to diminish his sense of responsibility to the inquirers with whom he does not sustain personal relations, and introduces an intermediary who furnishes the professional service .....	203
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For certain English views, see subdivision V below, p. 217.

## 21. PUNCTUALITY AND EXPEDITION.

It is the duty of the lawyer not only to his client, but also to the courts and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

### ANNOT.

Absence of counsel as ground for continuance, see Continuance, Cent. Dig. § 51; Dec. Dig. § 20; Criminal Law, Cent. Dig. §§ 1313, 1320; Dec. Dig. §§ 587, 593.

Absence of counsel as ground for new trial, see Criminal Law, Cent. Dig. § 2205; Dec. Dig. § 920; New Trial, Cent. Dig. § 173, 174; Dec. Dig. § 87.

The *Canons of Judicial Ethics* approved by The American Bar Association, July 9, 1924, provide in respect to judges:

### 7. PROMPTNESS.

He should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

### 8. COURT ORGANIZATION.

He should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good natured acquiescence by reason of friendly association with him.

It is desirable too, where the judicial system permits, that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

### 18. CONTINUANCES.

Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

## 22. CANDOR AND FAIRNESS.

The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language

or the argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witness, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

#### ANNOT.

Argument and conduct of counsel in general, see Criminal Law, Cent. Dig. §§ 1655-1693; Dec. Dig. §§ 699-730; Trial, Cent. Dig. §§ 267-309; Dec. Dig. §§ 106-133.

Regulation of professional conduct of attorneys and conduct ground for disbarment, see Attorney and Client, Cent. Dig. §§ 45, 51, 53, 54, 61; Dec. Dig. §§ 32, 38, 41, 42.

Conducting constituting contempt, see Contempt, Cent. Dig. § 21; Dec. Dig. § 10.

Some of the inquiries cited below relate to methods of procuring evidence which are deemed reprehensible, because they tend to encourage unreliable evidence.

Answer of the *Committee on Professional Ethics of the Association of the Bar of the City of New York:*

*Agreement:*

with a prospective witness, to induce him to testify to facts which tend to disgrace him, that attorney will represent him in case any suit is brought against him and client will indemnify him, should be disclosed to court and adverse client before he testifies . . . . .

*Question*

8

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiry, has expressed the view:

<i>Adverse Party:</i>	Question
if a lawyer is doubtful whether a stipulation for judgment was the result of mutual mistake as to a material fact, he should not enter judgment thereon without opportunity to the adverse party to seek relief on that ground.....	181
(See also <i>supra</i> , p. 56.)	
<i>Advice:</i>	
a lawyer should not advise the employment of a company in which he has a personal interest for the purpose of making investments without fully and fairly informing his client of his interest .....	213
(See also <i>supra</i> , pp. 56, 70.)	
<i>Affidavit:</i>	
an attorney should avoid presenting an affidavit which, though true, is misleading because it does not completely state the facts .....	40
an attorney should neither make nor procure an affidavit of service of papers stated to be annexed but not annexed.....	118
<i>Confidential Communications:</i>	
an attorney is under no duty to disclose that his client is the owner of property, when the attorney is sued as the owner, for a liability incurred by its owner.....	53
(See also <i>supra</i> , pp. 47, 71.)	
<i>Evidence:</i>	
a lawyer should not pay or consent to the payment of money to a spouse for evidence of his adultery.....	132
a lawyer should not countenance a bargain with a husband, accused of adultery, to procure a witness under the husband's control to prove the offense (though past, and without the consent, connivance, privity or procurement of the wife) in consideration of her release of all claims for future support for herself and children.....	163
<i>Divorce:</i>	
lawyers should be particularly careful to satisfy themselves that there has been no collusion in the prior conduct of the parties .....	37
it is not unprofessional to accept a retainer from one spouse to urge the other to assert his rights already accrued.....	37
a lawyer may properly bring a suit to annul a marriage, in behalf of one entitled to annulment, though the other party has brought suit for divorce; and the annulment suit is the result of a proposal from the plaintiff in the divorce suit, in consequence of a motion there for alimony and counsel fees; but the lawyer should make full disclosure of the fact to the court in each suit .....	54
an attorney should view with disfavor any offer by the adverse party to stipulate to furnish evidence of past offense, in consideration of advantages to the latter.....	86

in such case, however, if satisfied of the good faith of his client, he may proceed as suggested in the offer, if he make full disclosure to the court, and advises his client that the court may decline to confirm.....	86
a lawyer may properly advise to assist a wife, a citizen of one state to actually remove her residence in good faith to another, in order to procure a divorce under its laws, upon a ground not permissible at her former residence, when the cause exists and is not the result of collusion; though the husband requests it and offers a money settlement to induce it; provided no imposition is practised and the facts are fully made known to the court to which she applies for a divorce (majority opinion; minority regarding it as an unprofessional arrangement to escape the operation of laws).....	100
the vice of such a situation, does not arise from the state of the laws, but from possible imposition on the wife and upon the foreign court, by concealment and fraud; the careful observance of the conditions would tend to minify such arrangements and to rob them of the character which has led to the most serious criticism (majority opinion).....	100
a lawyer should not accept employment to procure a divorce for one known by him to be living an adulterous life.....	106
a lawyer should not pay or consent to the payment of money to a spouse for evidence of his adultery.....	132
a lawyer should not countenance a bargain with the husband accused of adultery, to permit a witness under his control to prove his offense (though past, and committed without the consent, connivance, privity, or procurement of his wife), in consideration of the wife's release of all claims for future support for herself and children.....	163
payment to a witness for unsealing his lips is never proper....	165
the attorney for one spouse should not be selected by the other or his attorneys.....	171
a fictitious controversy should not be foisted upon a court.....	171
a lawyer may properly advise his client to execute a power of attorney to attorneys of his selection to appear for him in a foreign court in a suit brought against him, so as to give validity to the decree of divorce.....	171
in the absence of contrary law or rule, it is not improper to stipulate that unless the court shall require the disclosure, the name and address of a correspondent shall not be disclosed, in the pleadings or otherwise.....	186
any such stipulation should be disclosed to the court (majority opinion) .....	186
it is improper to stipulate that the stipulation shall not be used or disclosed in the action .....	186
it is not improper, in good faith, to enter into and carry out an agreement to discontinue a separation suit, and to institute a divorce suit, on the confession of the husband's past adultery, and his furnishing the names of witnesses, provided such agreement is not illegal in the particular jurisdiction, and each attorney is satisfied of his client's good faith, and the agreement is in writing, and is disclosed to the court in the divorce action. Attorneys should scrutinize such offers with caution.....	192

## Question

accepting authority from an absentee to admit service of process, appear and file a proper answer, is not improper nor does it necessarily imply unlawful collusion .....	193
an agreement not to interpose a defense is against public policy; it should not be countenanced by attorneys.....	205
the interposition of an unverified answer denying adultery is a statutory right in New York; if the client desires it, the attorney may interpose it, though informed by his client that the charge is true; the answer in such suits has not the effect of an ordinary pleading and its presence does not operate as a deception.....	206
(See also <i>supra</i> , pp. 29, 34, 50, 77.)	
<i>False Statement:</i>	
a lawyer should not make a false statement to a jury, though he does so to counteract the effect of unfair conduct of his adversary .....	127
a lawyer should not seek to secure for his client relief predicated upon testimony known to him to be false.....	146
if a lawyer concludes that false testimony has been given in behalf of his client and that the further prosecution of the action would be an imposition on the court, and his client withdraws consent to his retirement or a dismissal or discontinuance, he should privately state to the court his desire to withdraw, with his reasons and ask that the cause be continued to enable his client to procure other counsel.....	146
a lawyer who discovers that false testimony has resulted in an advantage to his client, and who has been unable to induce his client to forego the advantage, should acquaint the injured party with the falsity .....	215
<i>Jury:</i>	
a lawyer should not make a false statement to a jury, though he makes it to counteract the effect of unfair conduct of his adversary .....	127
a prosecuting attorney should not accept as a juryman, a venire-man who has expressed an opinion of the guilt of the accused, without informing the judge and counsel for the accused.....	145
<i>Testimony:</i>	
it is improper to secure testimony by a contingent agreement for compensation dependent upon the result of trial.....	2
(See also <i>supra</i> , p. 37.)	
<i>Witness:</i>	
it is not improper for a lawyer to compensate a corporation for expert evidence upon the value of property, given by an employee of the corporation.....	57
it is not improper for a lawyer, subscribing witness to a will, to accept compensation for his time spent as a witness in a contest over it, where it is voluntarily tendered at the close of the litigation, and was not based upon antecedent agreement nor conditioned upon particular testimony the result or the amount involved .....	101
a lawyer should not advise his client to pay money to unseal the lips of a witness .....	110

payment to a witness for unsealing his lips is never proper; though payment in excess of legal witness fees may be made to expert witnesses; and allowance may be given in proper cases for loss of time, especially in the case of poor persons. .... 165  
 (See also *supra*, p. 58.)

For English views on the proper compensation of witnesses, see below, subdivision VI, pp. 244, 245, items 1084, 1085; on accepting compensation for service to one suing in *forma pauperis*, see p. 248, items 1110, 1111.

The following is a quotation from a recent *opinion* (concurring in part and dissenting in part from the ruling of the Trial Court in a charge to a jury) in *Burley v. State* in the Supreme Court of Georgia, 124 South Eastern Reporter at p. 536:

The administration of justice is not a game of shrewd or mystifying deceptions or camouflaged maneuvers. The Canons of Ethics of The American Bar Association, which has been adopted by the Georgia Bar Association, embrace the matured judgment of the great body of highly honorable American lawyers. In part these canons contain the following statement:

The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness.

And as further indicating the principles of candor the Canons of Ethics further provide:

A lawyer should not offer evidence which he knows the court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders. These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice. Report of Georgia Bar Association 1916, pp. 413, 414.

In the form of an oath approved by The American Bar Association, and also the Georgia Bar Association, included the following:

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

This is the high ground deliberately chosen by the American lawyer, and is to his everlasting credit. It looks to the public good and to the discovery of truth, "the object of all legal investigation."

### 23. ATTITUDE TOWARD JURY.

All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A

lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

#### ANNOT.

Argument and conduct of counsel in general, see Criminal Law, Cent. Dig. §§ 1655-1687; Dec. Dig. §§ 699-726; Trial, Cent. Dig. §§ 267-316, 729; Dec. Dig. §§ 106-133, 305.

Argument and conduct ground for new trial, see Criminal Law, Cent. Dig. §§ 2197-2201, 2255, 2265; Dec. Dig. §§ 919, 932; New Trial, Cent. Dig. §§ 919, 932; New Trial, Cent. Dig. §§ 43, 44, 92, 97-99; Dec. Dig. §§ 29, 47, 49.

#### 24. RIGHT OF LAWYER TO CONTROL THE INCIDENTS OF THE TRIAL.

As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross-interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

#### ANNOT.

Authority of attorney as to conduct of litigation, see Attorney and Client, Cent. Dig. §§ 161-189; Dec. Dig. §§ 87-96.

Duty of attorney to follow instructions of client, see Attorney and Client, Cent. Dig. § 220; Dec. Dig. § 108.

The *Committee on Professional Ethics of the New York County Lawyers' Association* has, in answer to inquiries, expressed the views:

<i>Duty to Client:</i>	<i>Question</i>
does not require continuation of employment, after the payment of a retainer, when the client ignores all communications from the lawyer .....	15
in such case the lawyer may retire after fair notice to the client and an opportunity to employ other attorneys.....	15

a lawyer may not properly violate his stipulation, under instructions from his client, where his adversary has relied thereon to his disadvantage; even though the stipulation is oral and not in writing as required by rule of court.....	31
when client makes his attorney's position intolerable, the latter may apply to the court on notice, to permit him to withdraw as attorney, but until relieved by the court, the attorney should take proper steps to protect the interests of his client in litigaion .....	55
an attorney undertaking to defend in behalf of an indemnitor, an action against the person indemnified, owes a duty to the latter, not to be affected by the interests of the indemnitor.... (See also <i>supra</i> , pp. 45, 47, 51, 57, 61, 68, 71; <i>infra</i> , p. 82.)	119

*Employment:*

a lawyer may withdraw from the employment of a client who instructs him to utilize corrupt activities.....	9
but a mere difference of view between lawyer and client does not require the lawyer to withdraw..... (See also, <i>supra</i> , pp. 31, 37.)	9

For English view, see below, subdivision VI, pp. 245, 246, items 1087, 1088.

## 25. TAKING TECHNICAL ADVANTAGE OF OPPOSITE COUNSEL—AGREEMENTS WITH HIM.

A lawyer should not ignore known customs or practice of the Bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of court.

### ANNOT.

Binding effect of agreements between counsel, see Attorney and Client, Cent. Dig. § 171.

Validity of oral stipulations, see Stipulations, Cent. Dig. §§ 5-13, 63; Dec. Dig. §§ 6, 19.

The *Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, has expressed the view.

*Duty to Client:*

a lawyer may not properly violate his stipulation, under instructions from his client, where his adversary has relied thereon to his disadvantage; even though the stipulation is oral and not in writing as required by rule of court.....	31
a lawyer should not assist a client to perpetrate a fraud.....	181

- if satisfied that his client is acting in bad faith, he should withdraw from a cause to avoid the perpetration of a fraud; if doubtful whether a stipulation for judgment was the result of mutual mistake as to a material fact, he should not enter judgment thereon without opportunity to the adverse party to seek relief on that ground..... 181
- a lawyer who learns that an advantage to his client has resulted from false testimony and who has been unable to induce his client to forego the advantage, should acquaint the injured party with the falsity..... 215
- a lawyer who has obtained an indulgence on the ground that he does not know his client's whereabouts, and who then learns it in confidence, should acquaint counsel for the adverse party, and in a proper case, the court, with the fact that he now knows his client's whereabouts but has learned it in confidence..... 217

(See also *supra*, pp. 45, 47, 51, 57, 61, 68, 71, 81.)

*Duty to Court:*

- it is not necessarily improper for a lawyer to move in usual course for a stay of execution after verdict without security and pending appeal, without informing court and adverse counsel that another judgment has been recovered against his client which may imperil collection; but if the question of solvency is raised, he should refrain from giving misleading information.. 208

(See also *supra*, p. 30.)

For English view, see below, subdivision VI, p. 246, item 1088.

## 26. PROFESSIONAL ADVOCACY OTHER THAN BEFORE COURTS.

A lawyer openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

### ANNOT.

Validity of lobbying contracts, see Contracts, Cent. Dig. §§ 587-589; Dec. Dig. § 126.

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiry, has expressed the view.

*Disclosure:*

- a lawyer consulted in a private interest to appear at a public hearing in the guise of a citizen and taxpayer (and refusing so to do) may use his discretion whether he will disclose the fact that his employment was so attempted..... 139

## 27. ADVERTISING, DIRECT OR INDIRECT.\*

The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

### ANNOT.

Advertising to secure divorces as ground for disbarment, see Attorney and Client, Cent. Dig. § 51; Dec. Dig. § 38.

The many devices and astute methods in which the principle of the above Canon is ingeniously infringed are well illustrated by a number of the answers to inquiries mentioned below.

Neither this nor any other Canon treats of names, signs or partnerships—the inquiries collated below relate to all of these matters. They are assigned a place here, unless and until some additional Canon suggests a more appropriate place for them.

\* For English views on advertising and cognate subjects, see subdivision V below, pp. 215 *et seq.*

**OPINION 1 OF THE COMMITTEE ON PROFESSIONAL ETHICS AND  
GRIEVANCES OF THE AMERICAN BAR ASSOCIATION.**

**SOLICITATION OF EMPLOYMENT BY MEANS OF LETTERS TO  
MEMBERS OF THE PROFESSION.**

The committee was requested to express its opinion as to the propriety of an attorney soliciting business from other members of the profession with whom he has had no previous relations, by means of circulars or letters accompanied by references and statements as to fees, such as offering "special rates," offering to divide fees, or stating the amount he would charge in specific cases.

**The committee's opinion :**

The essential dignity of the profession requires that the solicitation of professional employment should be avoided. Canon 27 of the Canons of Ethics disapproves all forms of solicitation as unprofessional and specifically states that "solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional." The Canon makes no exception as to solicitation from other members of the profession and contains no warrant for regarding such solicitation as differing from or being less improper than similar solicitation addressed to laymen. In the opinion of the committee such solicitation is improper.

In view of the foregoing opinion it would ordinarily be unnecessary to refer to the statements contained in such circulars or letters, but the particularly undignified character of the statements referred to in the question submitted for the committee's consideration justifies comment. Any conduct that tends to commercialize or bring "bargain counter" methods into the practice of the law, lowers the profession in public confidence and lessens its ability to render efficiently that high character of service to which the members of the profession are called.

**OPINION 4.**

**SOLICITATION OF EMPLOYMENT BY MEANS OF LETTERS RULE AS  
TO IMPROPRIETY NOT CHANGED BY LOCAL CUSTOM.**

The committee considered complaints against certain members of the Association practicing in Washington, D. C. The complaint was based on the fact that these attorneys were sending out and distributing to men who had attended training schools while in the military service, circular letters soliciting employment for the purpose of prosecuting their claims for additional pay under the Deficiency Appropriation Act of June 15, 1917, accompanied by agreement blanks employing the attorneys on a contingent percentage basis. The committee's attention was also called to similar circular letters that were being sent out by other lawyers in Washington who are not members of the Association.

In justification of their conduct the accused members urged that the letters were sent out "in accordance with a well-established custom generally followed by local lawyers of unquestioned repute and highest standing" engaged in establishing the rights of claimants before accounting officers in the various federal departments. They stated that these circular letters were issued under the direction of an attorney in their office who had served for many years in the departments, and knew he was acting in accordance with the customary practice. They further state that they had discontinued the practice as soon as the propriety thereof was questioned.

In view of the discontinuance, by the accused members, of the use of the circular letter as soon as the question of its propriety was called to their attention, the committee determined that no further action would be taken upon the complaint, but in order that its view of the custom alleged to prevail in the practice before the departments in Washington should be given general currency, it decided that its opinion should be included in its annual report.

#### The committee's opinion:

The committee is unanimously of the opinion that the use of the letter or circular on which the complaint was based is a violation of Canon 27 of the Canons of Ethics, which declares all solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, as unprofessional.

The committee is further of the opinion that the use of the circular letter is not justified by the custom alleged to prevail in Washington in practice before the departments, and that if any such custom exists it is itself to be condemned as contrary to proper standards of professional conduct.

#### OPINION 5.

**COMPENSATION—PROPRIETY OF SEEKING SUCH FROM THOSE (OTHER THAN CLIENTS) BENEFITED BY DECISION IN TEST CASE. SOLICITATION OF EMPLOYMENT FROM OTHER CLAIMANTS BENEFITED BY DECISION IN LITIGATION UNDERTAKEN FOR ONE.**

The following statement was furnished the committee:

An attorney, representing certain claimants brought suit to secure payment to his clients of their *pro rata* interest in certain funds. The suit served as a test case, payment having been withheld from all similar claimants on an interpretation of law. After obtaining a favorable decision the attorney sent a circular letter to other claimants who

would benefit thereby, and with whom he had no relation of attorney and client, stating that while he had a contract with his clients for his fees he, nevertheless, brought the suit as a test case and would not have done so had he not believed that all those having similar claims would be willing to pay him additional compensation by thereafter employing him as their attorney to collect what might be due them from the same funds. The letter states that those to whom it is sent are under no obligation to him, but it also requests the claimant to sign and return an agreement that is enclosed, which the attorney refers to as "an agreement to pay," but which is an agreement employing the attorney, on a contingent basis, to collect what is due the claimant from the funds in question.

The committee was asked to express its opinion as to whether it was proper for the attorney, after his client's case was decided, to ask other claimants, with whom he had no personal relations but who would benefit by the decision, to give him additional compensation for his services in connection therewith. The committee was also asked to express its opinion as to the propriety of the attorney's conduct in sending other claimants a letter of the character stated.

**The committee's opinion:**

An attorney can seek compensation for his services only from those who employ him. The fact that he is instrumental in securing a favorable interpretation of law which benefits others beside the client for whom the suit was brought, furnishes no justification for asking such others to pay part of his compensation, unless they are under an agreement so to do.

There being no basis for asking additional compensation from the other claimants, the attorney's letter to them accounts to the solicitation of professional employment contrary to Canon 27 of the Canons of Ethics. The letter is particularly objectionable because of the ambiguous statements contained. While specifically disclaiming the fact that these other claimants are under any obligation to him, the letter seeks to create the impression that he has done something for their benefit for which he should receive compensation. In the committee's opinion the asking of compensation of the other claimants and the solicitation of professional employment from under the guise of securing such compensation, is improper.

The following opinions of the *Committee on Professional Ethics and Grievances* of The American Bar Association are contained in its annual report for 1925. (Program of 48th annual meeting, pp. 139-149.)

**OPINION 7.**

**IN THE MATTER OF CHARGES PREFERRED AGAINST ——.**

After having its attention called to the matter by a local bar association, the committee, on its own motion, required the

respondent to answer charges based on the following specifications:

Specification No. 1. That in violation of Canon 27 of the Canons of Ethics of this Association, the respondent, during the month of October, 1923, issued and delivered, or caused to be issued and delivered, a certain circular or form letter, soliciting his employment as an attorney to collect for claimants money due them from the shares of their minor children as members of the \_\_\_\_\_ Tribe of Indians, which letter was accompanied by an employment contract for the recipients to sign.

Specification No. 2. That in violation of Canon 22 of the Canons of Ethics of this Association, the respondent in a certain circular or form letter dated October 15, 1923, stated in part as follows:

"I won this case finally before the Supreme Court of the United States. The suit was decided in favor of the parents in March last," knowing that the said statement was neither candid nor fair in that the Supreme Court, while sustaining certain of the petitioners' contentions, directed that the petition filed by the respondent for the petitioner be dismissed without prejudice. (*Work vs. U. E. ex rel. Mosier*, 261 U. S. 352, 43 Sup. Ct. Rep. 389, 67 L. Ed. 693.)

Specification No. 3. That in violation of Canon 27 of the Canons of Ethics of this Association the respondent during the month of January, 1923, issued and delivered, or caused to be issued and delivered, a certain circular or form letter, soliciting his employment in connection with the income tax returns of those to whom said letter was delivered.

The letter referred to in Specification No. 1 is dated October 23, 1923, and reads, in part, as follows:

You will remember that about three years ago, under a contract with some of the parents of \_\_\_\_\_ minors, I brought a test suit against the Secretary of the Interior to compel him to pay out the minors' money to the parents. The parents who contracted with me agreed to pay the fee whether I won or lost the case. I commenced the case believing that all parents interested would pay a reasonable fee in case I was successful. As you are aware, I won this case finally before the Supreme Court of the United States, and made a number of trips to Washington in taking care of it. The suit was decided in favor of the parents in March last, and since that time I have made three trips to Washington to get the money paid out, in accordance with the opinion. It was contended by the Department that no money accumulated after October 1, 1920, should be paid to the parents. I took the position that all money accumulated up to March 3, 1921, the date of the passage of the last Osage act, should be paid out to the parents. After a hearing on the matter before the Department of the Interior, and also after the matter was submitted to the Treasury Department, I was sustained in this proposition. This means that all of the parents will have something coming to them. The amount accumulating between October 1, 1920, and March 3, 1921, as near as I can ascertain, will amount to something more than \$2000 each. You are interested in this money being finally paid out under proper regulations, and will receive the same benefit that those receive who signed the original contract.

In view of these circumstances I feel that you would now be willing to contribute something toward a proper fee in this case. You appreciate that those who signed the original contract to pay, win or lose, took all the chances, and that you are now only paying after you are assured of success, and only in the event you finally receive the money. If I had not believed that practically all the parents would be willing

to come in on this suit, I would not have commenced it, or gone to all the expense that I did go to. However, as said in the beginning, you are under no legal obligations to pay me anything whatever, and it is entirely optional with you whether you do or not; but I have felt that as a matter of justice you would be willing to remunerate me for the services rendered.

I am enclosing you an agreement to pay, which if you feel like signing, you may return to me. Mr. \_\_\_\_\_ of this city has been associated with me in this matter, and he may call on you personally. I am now hoping that the work is practically all done, yet it is probable that I may have to make another trip to Washington, or may have to begin some more suits on behalf of some of the parents. However, I am not asking any parent now to pay me except in case of success.

The foregoing letter was in each case accompanied by an agreement to be signed by the recipient, which agreement reads as follows:

I hereby employ \_\_\_\_\_ to obtain for me the monies due me coming from the shares of my minor children as members of the \_\_\_\_\_ Tribe of Indians and which accumulated prior to March 3, 1921, as follows:

.....!..... \_\_\_\_\_ Allottee No.....  
.....!..... \_\_\_\_\_ Allottee No.....  
and agree to pay him for his services in that regard 5 per cent of amount collected with a minimum fee of \$200, and authorize him to do all things necessary to procure same.

Dated..... 1923.

The foregoing letter raised the question of the propriety of a lawyer's conduct in seeking compensation for his services, in conducting a test case for one of many claimants, from other claimants who were benefited by the decision but were not his clients. The committee first considered this phase of the matter and gave its opinion disapproving such conduct. (Opinion 5, page 476, XLIX Am. Bar Assn. Reports, 1924.)

The respondent's answer raised the question as to whether the letters referred to in Specification No. 1 and Specification No. 3 were justified by the personal relations existing between him and those to whom the letters were sent.

The committee heard testimony at Philadelphia, Pa., on January 15, 1924, and further testimony was taken before Earle W. Evans, Esq. appointed as Commissioner for that purpose, at Pawhuska, Okla., on June 26 and 27, 1924.

The committee's opinion was stated by Mr. Hinkley:

The letter of October 15, 1923, undoubtedly constitutes a solicitation of counsel fees for work previously performed in conducting a test case as to the right of parents of minor \_\_\_\_\_ Indians to receive the share of their children in the royalties of oil lands.

The committee has given its opinion that solicitation by a lawyer of a contribution from parties interested in a test case, made by circular after the test case has been concluded, must meet with the disapproval of the committee.

The letter contains the following statement:

I won this case finally before the Supreme Court of the United States. The suit was decided in favor of the parents in March last, and since that time I have made three trips to Washington to get the money paid out in accordance with the opinion.

The case to which this has reference is the case of *Work vs. Mosier*, 261 U. S. 352, which was argued by Mr. \_\_\_\_\_ before the Supreme Court. The proceeding was an application for a writ of mandamus against the Secretary of the Interior which was granted by the lower court and affirmed by the Court of Appeals of the District of Columbia. The Supreme Court of the United States reversed the case and remanded it to the Supreme Court of the District of Columbia with instructions to dismiss the petition. The contention of Mr. \_\_\_\_\_ is that this case, while technically a reversal and a decision against Mosier without prejudice, nevertheless settled the question involved in favor of the allowance of the minors' royalties to the parents and was so accepted by the Secretary of the Interior and the claims of the parents were paid accordingly. An examination of the opinion of the Supreme Court in the case shows that it establishes the principle that the parents of minor \_\_\_\_\_ Indians were entitled to receive the royalties during the period involved.

It will be seen from the extract of the letter that it plainly contains an erroneous statement as to the decision of the Supreme Court and as such is misleading and should not have been made.

The testimony submitted satisfies the committee that it was Mr. \_\_\_\_\_'s intention to send the circular only to Indians who had been asked to participate in the litigation and had expressed a willingness to contribute in case the litigation was successful in recovering the money, but the evidence shows that in a few cases it seems to have been sent to members of the tribe who had not indicated this attitude toward the litigation.

The letter referred to in Specification No. 3 is dated January 5, 1923, and is a solicitation asking the employment of Mr. \_\_\_\_\_ by all the members of the \_\_\_\_\_ Tribe of Indians for the purpose of making out their income tax returns.

It appears that in 1921, for the purpose of preparing the 1920 income tax returns, Mr. \_\_\_\_\_ went to considerable labor and expense in establishing the principle that the \_\_\_\_\_ Indians receiving royalties from oil leases were entitled to credit for depletion of the oil wells and in establishing, with the aid of engineers, the proper method of calculating this depletion and the amount thereof. As a consequence, the employment of Mr. \_\_\_\_\_ for the purpose of making out the income tax returns of the Indians was recommended by the \_\_\_\_\_ Tribal Council and also by a larger volunteer body known as the \_\_\_\_\_ Protective Association.

The Secretary of the Interior appears to have ruled that the matter of the allowance could not be taken up by the Department as to competent Indians but only as to the incompetent or restricted wards of the nation.

The specification of solicitation of employment by Mr. \_\_\_\_\_ is established, and the committee takes particular exception to the language indicating that the attorney sending it was better qualified than anyone else to do the work.

The case does not, however, fall within the prohibition of The American Bar Association Canon of Ethics No. 27 reading as follows:

But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional.

The evidence shows that Mr. \_\_\_\_\_ had represented the \_\_\_\_\_ Indians in legal matters for many years and had served individual members of the tribe many times. He was well known to all of them and had done valuable work in establishing the principle of deduction from their taxable income for the depletion of the oil wells on their lands.

The committee thinks that the circular under all the circumstances does not present a case of solicitation not warranted by personal relations. It is of the opinion, however, that the language of the circular is not entirely free from criticism and that it would have been much better to have had the recommendation of Mr. \_\_\_\_\_'s employment for the purpose of making out the income tax returns come solely from the Tribal Council or the \_\_\_\_\_ Protective Association rather than by circular from the attorney.

The decision of the committee is that the matters complained of do not require any disciplinary action on its part.

#### OPINION NO. 8.

**LAY INTERMEDIARIES—ACCEPTANCE OF EMPLOYMENT WHERE INTERMEDIARY PROFITS ON LAWYER'S PROFESSIONAL SERVICES.**

**SOLICITATION—PROPRIETY OF LAWYER ADDRESSING MEETING HELD TO RAISE FUNDS FOR HIS OWN EMPLOYMENT.**

The Bar Association of a metropolitan city has requested the committee to consider the following statement of facts, and express its opinion as to the propriety of the activities of the attorneys involved.

An automobile club charges its members yearly dues for the privileges furnished them. In soliciting membership from the public it offers to furnish its members with certain services of its "Legal Department" in connection with their ownership and operation of automobiles. It engages in other activities general in character and for the benefit of its collective membership, such as legislative efforts to improve traffic and road conditions, the marking of highways, the furnishing of information as to roads and road conditions, etc.

This "Legal Department" consists of certain attorneys who are engaged in general practice and who devote to this service only such of their time as is necessary. They are paid a stipulated monthly amount. When the matters on which they are consulted by members result in suit or other legal proceedings they

are also entitled to charge such members their usual and customary fees.

The printed matter which the club sends to prospective members contains the following statement as to the nature of the services rendered by this "Legal Department."

The Legal Department of the club is located at.....  
.....and furnishes legal advice to members regarding the laws of registration, ownership, and operation of automobiles. It undertakes the defense for members for alleged violations of traffic ordinances or speed laws, only, if in the opinion of its attorneys, it is a case of unusual hardship, or a test case involving some new or unusual regulation.

The Legal Department does not aid in the prosecution of criminal cases. .... In civil matters the Department will advise club members in respect to their legal rights in the prosecution and defense of claims for damages for personal injuries, damage to property, and other matter pertaining to the ownership or use of automobiles. It will try to settle out of court controversies arising from collisions in which members are concerned. If a case involves two members, the Legal Department is willing to sit as arbitrator, if both parties consent.

No charge is made for this service, but members are expected to pay any expense incurred for them other than charges for postage, local telephone calls, or local carfare. If it is necessary to appear in court, draw or file pleadings, etc., the usual attorney's fees will be charged.

A

B

C

*Attorneys.*

Some time ago the state in which the automobile club is located passed a law fixing certain license fees on trucks. Owners of trucks, who were members of the club, were invited to attend a meeting to hear the attorneys' opinions of the statute, and to raise funds for the purpose of contesting its validity. The meeting was addressed by the attorneys comprising this legal department, and a fund was collected from those present, which fund was used to pay the expenses of litigation, including substantial fees to the attorneys in question.

The attention of the committee is also called to certain sections of the statutes of the state in which the club is located. For the reasons stated below, no reference will be made to these statutory provisions.

The committee's opinion was stated by Mr. Howe.

In order to clearly perceive the fundamental questions involved, it is first necessary to denude the facts of any specious garments of apparent propriety with which they may be clothed. That there may be no misconception let it be noted that the club does not employ these attorneys for the purpose of advising it or its members on questions

affecting its interests or on questions of collective interest to its membership as a whole, but employs them for the purpose of advising its members in respect to their individual affairs. In other words, it furnishes the services of these attorneys to such members of the public as are willing to pay its membership fee therefor. That the membership fee may, or may not, at the same time purchase for the payer other direct or indirect benefits is of little moment so long as the legal service is one of the specific and substantial benefits that it does purchase. It is apparent that the furnishing of these legal services is a substantial inducement to membership.

It will be noticed that the statement of the club's activities omits any reference as to whether it is an association or a corporation, or whether or not it is organized for profit. The omission is intentional, as the committee cannot properly express an opinion as to whether the club's conduct is in violation of any statute prohibiting the practice of law by a corporation or other lay agency. Those interested in what constitutes the practice of law are referred to the comprehensive report of a special committee appointed to consider the subject by the Conference of Bar Association Delegates, which report was adopted by the Conference on August 24, 1920. This report treats of the matter at length and quotes from the decisions then available. These decisions have been affirmed and strengthened by subsequent important decisions to the same effect.\* It will be noticed that these decisions are a unit in stating that a lay agency does not change the character of its acts by furnishing duly licensed attorneys to render the service which it agrees to perform, as these attorneys are merely its agents, under its control and in its employ for that purpose. If a lay agency is not entitled to practice law directly, it is not entitled to do so indirectly, by employing licensed attorneys to carry on that portion of its activities for it.†

In furnishing these legal services to its members and in charging them a membership fee which includes payment for these services, the club, in effect, is selling and exploiting the lawyer's professional services to its own benefit or profit. That the benefit may be indirect or the profit indefinite will not vary this conclusion. The sale of an item is no less a sale because the price paid for it or the consideration given is lumped with other items so that it cannot be segregated. Even if the club is not organized for profit the conclusion is the same. In that case its owners (the membership) may not receive any direct money benefit but the club as an entity may profit from this particular activity to the benefit of its other activities and the membership thereby receive an indirect benefit or profit. Neither are these conclusions varied by the conditions under which the club employs these lawyers. Irrespective of whether they give all or only a portion of their time to the service furnished by the club, and of whether they receive a salary, are paid a percentage, or are paid for each separate item of work, the result is the same so long as a lay agency pays a lawyer one amount for his services and for those services charges a different amount to the person to whom they are rendered.

Having thus analyzed this activity of the club, we may now consider the propriety of the relations thereto of the attorneys it employs.

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\* *Midland Cr. Adj. Co. vs. Donnelley*, 219 Ill. App. 271. *People vs. Merchants Protective Corp.*, 209 Pac. (Cal.) 363. *State ex rel. Lundin vs. Merchants Prot. Corp.*, 105 Wash. 12,177 Pac. 694.

† *Matter of Co-operative Law Co.*, 198 N. Y. 479. *Matter of Pace & Stimpson*, 170 N. Y. 818, 156 N. Y. Supp. 641. *Matter of Duncan*, 83 S. C. 186. *State ex rel. Lundin vs. Merchants Prot. Corp.*, 105 Wash. 12,177 Pac. 694. *People vs. Merchants Prot. Corp.*, 209 Pac. (Cal.) 363.

Society has seen fit, for its own benefit and protection, to limit the practice of law to those individuals whom it has found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. Neither this privilege, nor any responsibility or duty connected therewith, can be delegated to or shared with a layman. As the lawyer cannot share his professional responsibility with a layman or lay agency, he cannot properly share his professional emoluments with them. This of itself is sufficient to render it improper for a lawyer to allow his services to be sold or dealt in by any layman or lay agency. But there is yet another reason why such a practice is abhorrent. The essential dignity of the profession forbids a lawyer to solicit business or exploit his professional services. It follows that he cannot properly enter into any relations with another to have done for him that which he cannot properly do for himself.

It must, therefore, be held that the furnishing, selling or exploiting of the legal services of members of the Bar is derogatory to the dignity and self-respect of the profession, tends to lower the standards of professional character and conduct and thus lessens the usefulness of the profession to the public, and that a lawyer is guilty of misconduct when he makes it possible, by thus allowing his services to be exploited or dealt in, for others to commercialize the profession and bring it into disrepute.

The conduct of the lawyers in question must be therefore disapproved on the ground that their relations with the club amounts to a division of professional fees with a lay agency and to an agreement with this lay agency for the exploitation of the lawyers' professional services.

We may now consider the propriety of the actions of these attorneys for the club in addressing a meeting of truck owners which was called for the purpose of raising funds to defray the expenses of contesting the validity of a statute imposing certain license fees on trucks. Several essential facts remain unstated. The statement does not disclose who caused the meeting to be held or whether there was any understanding that these attorneys were to be employed in the event that those attending the meeting subscribed sufficient funds. If the attorneys voluntarily interested themselves in the matter and caused the meeting to be held their action was improper (Canon 28 of the Canons of Ethics). Even if acting on behalf of a client their actions would still be improper if it was understood that they were to be employed for the purpose of making the contest. The fact that the meeting was held under club auspices, though only a small portion of its members could be interested in the question, connected with the facts surrounding the relations of these attorneys with the club, and the fact that the fund was collected and was used to pay their fees and expenses, all lead to a presumption that these attorneys knew that they were to be so employed. As it is improper for an attorney to solicit employment, it must be equally improper for him to solicit funds to make such employment possible or to address a meeting called for the purpose of raising funds for his employment.

*Answers of the Committee on Professional Ethics of the Association of the Bar of the City of New York:*

Corporation:	Question
propriety of acceptance of employment from, to advise its members is a question of law.....	1

<i>Solicitation:</i>	
by a lawyer with knowledge of a judgment debtor's property, of employment through the attorneys for judgment creditors to collect judgments which have remained unsatisfied for a long time, is improper.....	7
it is improper for a lawyer who has been consulted by members of a club concerning their rights in respect to a tax to address letters to other members, who have not consulted him, advising them of his opinion that the tax is illegal and offering to represent them .....	16

The *Committee on Professional Ethics of the New York County Lawyers' Association* has made the following announcement:

#### ADVERTISING.

A statute in New York makes it a penal offense to advertise for divorce litigation (Penal Law, s. 120). When a statute penalizes specific conduct it follows that a lawyer should not commit the offense. It is a misdemeanor to advertise as a lawyer or as maintaining a law office, without being admitted to practice (Penal Law, s. 270). The laws respecting illegal advertising by any persons apply, of course, to lawyers. But beyond the expressly prohibited categories the sentiment of the profession is in general opposed to certain forms of advertising by its members. Part of this opposition arises from tradition; the nature of the profession, historically, made it bad form to advertise. But the local newspaper invited an indulgence, to the extent of inserting a card indicating that the lawyer had an office in the county town. In this announcement of a fact nothing tended to mislead, or to injure his standing with his fellow men. So, in some localities, it was no longer held traditional that a lawyer should refrain from inserting a professional card of announcement in a local county paper. Later the practice developed of advertising in similar fashion in legal periodicals, then in law lists and other specially prepared publications, where the information imparted might reach persons in search of that kind of a lawyer. Finding this practice established in certain localities and among certain practitioners, especially those pursuing commercial practice, the Canon of the American Bar Association (27) says:

"The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom and sometimes of convenience, is not improper."

With this our committee is agreed (Answer 47-i-b); but it finds evil tendencies in unrestricted advertising by a professional man participating in the administration of justice. Such a man has no wares, he can exhibit nothing tangible to illustrate his skill. He can, with propriety, give notice that he is a lawyer and where he can be found. But he cannot, in the opinion of the committee, far transcend this simplicity without acting unprofessionally; for illustration, it has considered as a matter of personal taste the insertion of a simple professional card in a trade journal; corporations and committees may, in its opinion, properly indicate the name of their counsel in their advertisements; a simple card may be inserted in a law list, circulating among lawyers or laymen; a lawyer may indicate his willingness to write briefs for other members of the Bar; or may advertise a separate business lawfully conducted by him; or may give notification of his resumption of practice; or that he specializes in a particular branch such as that of income tax consultant. Here he is giving information. When he seeks, however,

to become urgent or to claim special advantages, or is boastful of his skill or experience, then, in our opinion, he enters upon objectionable ground. Here there is an evil tendency reacting upon the usefulness of the profession. There is no measure by which the prediction or representation of the advertiser may be realized, except later results. The tendency would be to mislead the confiding, and make in the profession a group of men striving for employment by exaggerated misstatements or misleading promises. Therefore, the committee has disapproved advertisements in various forms which in its opinion boast of professional skill or talents or guarantee satisfaction or which urge employment or assign adventitious reasons for it. It has deprecated forms of advertising by others, which imply a desire on the part of the advertiser to secure a lawyer who will depart from the standards of his profession, as well as advertisements by lawyers which indicate a willingness to depart from such standards. Illustrations will be found under the subjoined topical head, Advertising.

### SOLICITATION.

While public needs should be met by an adequate number of adequately equipped lawyers, it is a public detriment to permit or encourage lawyers to enter a race, and thus by stimulation promote the employment of lawyers. The Canon of the American Bar Association (Canon 27), declares the solicitation of professional employment, where not warranted by personal relations, to be unprofessional, whether done directly, or indirectly, or by various methods which it suggests as reprehensible, by way of illustration. In accepting this view the committee considers that the discouragement of such solicitation is a wise tradition in the profession and tends to prevent lawyers from becoming a menace to the established peace of the community. Lawyers should answer a demand, not create one. They should be in a position to scrutinize, correct, and soundly advise. In a race for business, judgment is too likely to be overridden by anxiety. It is against the public interest that lawyers should become clamorous and systematic seekers, by solicitation, for professional employment from those not qualified to judge of their merits.

### COLLECTION AGENCIES.

When the committee began to function, one of the earliest conditions brought to its attention was the relationship between lawyers and collection agencies. In the relation as it then too often existed, the lawyer was the servant of the agency to do its bidding, and the lawyer's public function was farmed out by those not entitled to exercise it, and not amenable to summary discipline. This led to abuses which destroyed the independence of the lawyer and obscured his sense of obligation to the real principal and client. The proper administration of the office of lawyer required that it should not be under the control of an intermediary whose qualifications had been in no way demonstrated. In the course of a series of questions the committee found an opportunity to express its views of the proper application of the fundamental principles involved. It has recently summarized instances (Answer 220), in which the office is utilized by those who, though not empowered to exercise it, assume its direction and control, or at least assume such direction and control over the lawyer entitled to exercise it, that he is rendered less able to establish and maintain to the real client that position of responsibility and duty which the office demands. The committee has expressed its disapproval of situations obscuring the relation

of lawyer and client by the interjection of a controlling intermediary, such as the division of the lawyer's fees with the collection agency, the agency's charge to its patrons for the lawyer's services, its guarantee of his honesty or efficiency, its solicitation of employment for him, his compensation of the agency for such solicitation, the doing of these acts under disguise, a partnership between lawyer and collection agency, acceptance of employment from the agency as its employee to render his professional services to its patrons, the agency's practice of law, and its use of an officer of the agency to attain the same improper ends.

These are illustration. It will be readily seen that some of them embody additional objectionable features.

In answer to inquiries the *Committee on Professional Ethics of the New York County Lawyers' Association* has expressed the following views:

Advertising:	Question
a simple card—in a trade journal—is a matter of personal taste.	1
advertising for an attorney to hustle for business for a collection agency tends to lower the ethical standards of the Bar.....	3
the insertion of the words "avoid litigation," does not justify an advertisement that the advertiser seeks employ to adjust disputes .....	31
by a printer to supply legal briefs is improper.....	36
by an attorney, indicating a willingness to take all cases regardless of merit, and containing a guaranty of satisfaction is improper .....	45
a lawyer should not advertise his talents or his skill.....	45
soliciting accounts for collection and the general solicitation of professional employment should be avoided.....	47-i-a
a lawyer's advertisement should consist of a simple professional card .....	47-i-b
the advertisement of its attorney's name by a corporation, bank or trust company or in a reorganization or creditors' committee's announcement of its purposes, in newspapers or circulars, or upon its letter heads, is not objectionable.....	47-viii-a
nor is there impropriety in an attorney permitting his name to be announced or counsel for a trade organization or association upon its stationery.....	47-viii-b
nor is it improper for a collection agency to announce the name of its attorney or counsel upon its stationery or in its advertisements .....	47-viii-d
the payment of a fee to a law list for the appearance of a lawyer's name in the list, is not improper, if the announcement is not in improper form; but the payment should not be measured by the amount realized by the lawyer.....	47-ix-a
in a banquet program (in a specified form containing numerous objectionable features) is improper.....	50
the advertisement of the card of a patent attorney, stating that he secures patents, or that he was formerly an Examiner in the United States Patent Office, is not improper.....	58

it is highly improper for a lawyer to advertise that having severed relations with a former client, he is free to accept and prosecute claims against such former client.....	62
it is improper for a lawyer to advertise urging his employment as a patent attorney.....	65
it is improper that a lawyer should advertise his skill, as a shopkeeper his wares.....	65
it is improper for a lawyer to permit a corporation to advertise for business and solicit employment by stating that the lawyer is counsel for the corporation and is a member of the legislature (when the legislature passed the law under which the business sought by the corporation was made possible).....	72
a lawyer may properly advertise in a law journal offering his assistance as a brief writer.....	83
advertising to handle deserving cases without compensation is improper; it is derogatory to the dignity of the profession and too readily opens the door to imposition.....	89
a lawyer may with propriety circulate among members of the Bar an announcement that he is both a lawyer and a Certified Public Accountant; without, however, suggestions of reasons why his employment to assist them would be of advantage...	96
advertising to furnish attorneys with answers to questions upon the law of a foreign state, is objectionable.....	105
a lawyer advertising a loan brokerage and real estate business carried on by him should avoid therein the solicitation of professional employment, or of business or employment because he is a lawyer.....	114
the solicitation of "advertising of the right sort for lawyers and their clients," suggests the promotion of the improper discussion of litigation and the improper puffing of lawyers.....	115
a lawyer should not furnish to his clients drafts containing his name .....	131
it is not improper for a newspaper to carry as news, a list of patents issued, compiled by a lawyer, with his name and designation as patent attorney.....	174
it is not improper for a lawyer to circulate notices of his return from war, among clients and others.....	178
it is not improper for a lawyer, specializing in income tax matters, to advertise by card in daily and trade papers that he is an income tax consultant.....	195
for a lawyer to accept employment from a daily newspaper to conduct a column of answers to questions upon law directed to him through the newspaper, in which his name and office as attorney-at-law appear, is improper advertising of the lawyer..	203
the cards or stationery of a law firm should not represent a layman as managing or conducting a department of its professional business; this lends itself too readily to solicitation or using it for advertising purposes.....	212
anonymous advertisements offering free advice or free consultation do not comport with the responsibility or dignity of the office of lawyer; the failure to disclose the name lends itself to imposition and fraud; and such form affords an opportunity for the practice of law by those not authorized to practise.....	222

## Question

a simple professional card in a foreign language newspaper is not improper .....	223
extent to which lawyer may properly advertise is aptly expressed in Canon 27 of the American Bar Association.....	225
advertising through a club, by publication in its official organ, and by loose leaf binders, and card and bulletin board, in a method which goes beyond the limitations aptly expressed in the Canon (27) of The American Bar Association, is regarded as professionally improper .....	225
letter head of lawyer, indicating his specializing in a branch of law is unobjectionable; but a statement therein of his former official position (in a department of the national government administering that law) is in bad taste and is disapproved because of the inferences that are likely to be drawn therefrom...	231
by lawyer of one state, resident in another where he is not admitted to practice, by inserting a card in a local newspaper at his place of residence, and there conferring professionally with clients in respect to matters in the first state, is not professionally improper unless it conflicts with the law of his residence..	237
<i>Announcement:</i>	
by a New York lawyer of his association with a foreign lawyer, should clearly disclose that the latter does not intend to practise law in New York.....	23
<i>Card:</i>	
it is not a proper practice for a clerk (not admitted to the Bar) to have cards printed showing that he is connected with a lawyer's office .....	49
an advertisement of the card of a patent attorney, that he secures patents, or that he was formerly an examiner in the United State Patent Office, is not improper.....	58
it is not improper for a lawyer, specializing in income tax matters, to advertise by card in daily and trade papers, that he is an income tax consultant.....	195
the cards and stationery of a law firm should not represent a layman as conducting or managing a department of the lawyer's professional business .....	212
<i>Certified Public Accountant:</i>	
a lawyer may with propriety circulate among members of the Bar an announcement that he is both a lawyer and such accountant, without, however, suggesting reasons why his employment to assist them may be of advantage.....	96
a partnership between a lawyer and a certified public accountant for the practice of public accounting and tax report service is not professionally proper, because it implies the exploitation of the lawyer's professional services for the profit of one not entitled to practise law (majority opinion).....	201
<i>Clerk:</i>	
the gratuitous distribution by a lawyer to his employees of moneys based on his annual profits is not objectionable; but an advance agreement with non-professional employees for such distribution is objectionable as inconsistent with essential professional dignity and a cloak for solicitation of employment.	122
compensating a clerk because of the business secured from his friends is improper.....	80

<i>Club:</i>	Question
advertising through a club, by publication in its official organ, and by loose leaf binders, and card on a bulletin board, in a method which goes beyond the limitations aptly expressed in the Canon (27) of The American Bar Association, is regarded as professionally improper.....	225
<i>Collection Agency:</i>	
the division of a lawyer's fees with a collection agency is improper .....	47-ii-a, 47-iv-b
may employ a lawyer to render services to it; but if he render services to its patron, the lawyer should charge the patron and not permit the agency to charge the patron for his services .....	47-ii-b, 47-vii-a
the agency and the lawyer may respectively charge the patron, each for the service rendered by each respectively.....	47-ii-c
should not be permitted by the lawyer to guarantee his faithful discharge of his duties.....	47-ii-c
should not be permitted by circular to solicit employment for the lawyer .....	47-iv-a
nor be compensated by him therefor.....	47-iv-c
nor though the lawyer renders the service gratuitously.....	47-iv-d
when specifically authorized may select an attorney for its patron .....	47-vii
it may announce the name of its attorney or counsel upon its stationery and on its advertisements.....	47-viii-d
a lawyer making a collection entrusted to him, by a collection agency, as the authorized agent of its patron, may properly remit the proceeds to the agency.....	51
a lawyer should not assist a collection agency in the unlawful practice of law.....	74
nor permit it to solicit employment for him.....	74
nor divide with it, his fees for professional services.....	74
nor for collections, though they exclude the bringing of suit or appearance in court.....	98
a lawyer should not receive employment from a collection agency as an intermediary, which fixes his fee and exploits his services for its own profit.....	125
should not solicit for lawyers; should not share lawyer's fees; should not hawk lawyer's services; should not practise law....	130
a lawyer should not permit it to sell its letter heads containing his name, to facilitate its patrons' collections, nor permit its patrons to use his name as a means of such facilitation.....	136
a collection agency not organized nor conducted to foster the interests of a lawyer, may, in case of need and on unsolicited request recommend a lawyer, provided he does not share his fee with the agency nor pay for the recommendation directly or indirectly .....	147
but its regular and habitual recommendation of the lawyer, with his knowledge and approval and without request from its patron is objectionable solicitation.....	147

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- it is not splitting fees between lawyer and collection agency for each to charge its own fee..... 220
- the acceptance by a lawyer from a collection agency of a claim for collection at a stipulated fee net to the lawyer, the agency retaining an additional fee as its own charge, is not improper.. 220  
in such case the creditor and not the agency is the lawyer's client, and his professional duty, relationship and responsibility is to the client, not to the agency (which is the client's agent, and is not the principal, nor the lawyer's representative). 220
- where an agency solicits a claim upon a contingent basis, and failing in its efforts to collect, forwards it to a lawyer for collection upon a lower basis, the receipt of such employment by the lawyer from the agency as such intermediary tends to destroy his sense of direct responsibility to the creditor, his client; and such fixing of the lawyer's compensation enables the agent to exploit his professional services for its own profit, hence it is to be deprecated..... 220, 125
- the regular and habitual recommendation of a lawyer by a collection agency does not differ in quality from any other organized solicitation of his professional employment..... 220, 147
- a collection agency may, as agent for a creditor, transmit a claim or employ a lawyer in his behalf, provided the employment is free from divided allegiance, or inconsistent obligation, and is not permitted to deprive the lawyer of the untrammeled relation of fidelity to the creditor..... 220
- {a collection agency may properly employ a lawyer as its own adviser or to represent it, but its employment of a lawyer in its own behalf to represent its customer, is the exploitation of the lawyer for its own profit, as an intermediary between lawyer and client and is no professionally proper; the exploitation of the office of a lawyer for the profit of another is an abuse of its functions; the solicitation by the agency for the common advantage is solicitation for the lawyer; the obligation to the agency should not be permitted to supersede or interfere with the lawyer's primary obligation to its customers..... 220
- the following matters should be avoided in the relations between lawyers and lay collection agencies:
- the division of fees for the lawyer's services:  
220, 47-ii, 47-iii, 47-iv, 136
  - the charge by the agency for the lawyer's services:  
220, 47-ii-b, 74
  - the guarantee by the agency of the lawyer's honesty or efficiency .....
  - the solicitation by the agency, of the employment of its attorney .....
  - compensation of the agency by the lawyer for its solicitation of claims for him..... 220, 47-iv-c
  - furnishing such compensation in disguise, by the lawyer charging its patrons less than his other clients for similar services, in order that it may be paid..... 220, 74
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the practice of law by the agency.....	220, 136
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the habitual recommendation of the lawyer by the agency, so as to amount to systematic solicitation for him....	220, 147
a properly conducted collection agency not only has a legitimate right to exist, but is a useful aid to the mercantile community..	220
the ownership or control of a collection agency or of shares in it offers such a ready cloak for improper conduct by a lawyer that the practice should be discouraged; though there is no in- herent impropriety in such ownership, provided it is not utilized for such improper purposes.....	238
<i>Collections:</i>	
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the division of fees between a lawyer and a collection agency is improper .....	47-ii-a
a lawyer who makes a collection, entrusted to him by a col- lection agency, as the authorized agent of its patron, may properly remit the proceeds to the agency.....	51
the making of collections by a lawyer is professional employ- ment; and in such employment he should not use an assumed name, nor employ solicitors to secure the business; but he may undertake collections, with or without litigation; or maintain a mercantile agency, and may recommend another lawyer for employment by his clients; but any division of fees with another lawyer should be based on the sharing of professional responsi- bility or service; and a division merely because of the recom- mendation is improper.....	82
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a lawyer should not accept employment from one in the collec- tion business to institute actions and draw papers for a patron of the latter for a fee to be paid by the latter.....	121
a lawyer should not accept employment from a Justice of the Peace of another state not admitted to practise law to make collections and share with the Justice his compensation.....	130
<i>Counsel:</i>	
a lawyer should not become counsel for laymen, who furnish his professional services to their patrons.....	214
<i>Death:</i>	
after death of his partner, a lawyer may properly, as a gratuity, pay a portion of his fees subsequently earned, to the widow and children of the decedent; but he cannot properly contract with them for such division of fees.....	161

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<i>Duty to Client:</i>	
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<i>Employment:</i>	
a lawyer should not accept employment from one in the collection business to institute suits and draw papers for a patron of the latter for a fee to be paid by the latter.....	121
a lawyer should not enter into an arrangement, which is a device for systematically obtaining business for him, and stirring up litigation for profit.....	140
acceptance of employment by lawyer as adviser of syndicate, organized to solicit contracts to indemnify against demands under the Revenue Acts, is not improper, if its business be legitimate .....	175
but (in opinion of majority) his compensation should not be contingent upon securing the customer (under circumstances suggested which might tempt him to color his opinions or computations to secure the customer).....	175
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<i>Guarantee:</i>	
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nor a mercantile agency.....	131
such a guaranty by collection agencies or law lists, as a bait to secure business, is to be condemned.....	185
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<i>Judgment:</i>	
claiming to have information to enable a lawyer to collect a judgment and soliciting employment to collect it is unpro- fessional .....	91
settlement by plaintiff's attorneys with willing judgment debtor against the wishes of his attorneys who insist that their bill must first be paid, is not improper.....	93
a lawyer should not purchase judgments at a discount for the purpose of enforcing them.....	160
where an offer is made to purchase from a judgment creditor his judgment against two tortfeasors and the creditor's attorney suspects that the motive underlying the offer is to enable the insurer of one of the debtors to enforce the judgment against the other and then claim that such satisfaction discharges the debt and releases the insurer's obligations, the lawyer should put the facts before the creditor for his moral judgment, but the sus- pected motive is not sufficient to deter the lawyer from advising his client to accept the offer if he is so inclined.....	162
judgment debtor's business and liable to each upon the pro- motion of a client's interest may justify an attorney for a judgment creditor, as an exceptional circumstance, in the solici- tation, through their attorneys, of other judgment creditors similarly situated but ignorant of the facts, to cooperate in enforcing rights against third persons secretly interested in the judgments in their respective favor.....	228
<i>Law Lists:</i>	
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the fact that the list is intended for circulation among laymen does not make such payment improper.....	47-ix-a
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a lawyer should not allow his name to appear upon drafts of mercantile houses, or a mercantile agency, as a means of coercing or inducing payment of the drafts.....	131
a lawyer should not permit his name to be used on stationery of a mercantile agency sold to its patrons to facilitate their collections nor permit his name to be used by the patrons to facilitate their collections.....	136
a lawyer should not enter into relations with its officer, which he could not properly maintain with the agency.....	137
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a law firm should not hold out a clerk, not a member of the Bar, as a lawyer, by placing his name on their door.....	79
it is improper for a lawyer to engage in professional employment under an assumed name.....	81
the continuation of a firm name after the death of a partner is not improper (where not unlawful).....	161
a partnership should not pay for the use of a firm name.....	170
a lawyer may continue practice in his own name, or permit the use of his name in law partnership, though also engaged in other business under his individual name, or his individual name incorporated; but if he allows a corporation to adopt his name, he may lose its control; and members of the committee do not favor using his individual name, as the name of a corporation or of a trade or business organization.....	179
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\* For English view, see below, p. 215, subdivision V.

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law partnerships are matters of custom and convention; but the committee cannot assume that a partnership between a member and a non-member of the New York Bar can lawfully be conducted in New York in a firm name.....	197
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by a <i>bona fide</i> Trade Organization, of its own members, and in its own interest, and not as a mere cover for solicitation of employment for a lawyer is not improper.....	47-iii-a
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a lawyer may not properly employ solicitors to obtain business for him .....	81
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it is not improper solicitation of employment for attorneys for an insurer who has partially paid a loss and taken an assignment of a part of single cause of action for negligence, to solicit, the assignor, the owner of the remaining part, to join in the action or to assign the remaining part to the insurer, for action in the name of the latter, the lawyer to be compensated by both insurer and assignor, the insurer agreeing to pay costs in case of defeat.....	198
but in case the interests of insurer and assignor should become adverse, the attorneys should advise the assignor and request him to secure independent counsel.....	198
an attorney, though he does not solicit employment, should not voluntarily and unsolicited, inform strangers of facts upon which they could predicate legal rights, where he is likely to be employed to prosecute them, though the national government will thus be prevented from collecting an illegal tax (majority opinion) .....	199
it is improper solicitation for a lawyer to write his clients and friends generally of the advantages of will making; in special cases such a letter might be justified by personal relations or circumstances .....	219
volunteering of information and advice to induce employment to procure decree of annulment of marriage is not professionally justifiable .....	224
by communicating with attorney for judgment creditor, and seeking employment to enforce the judgment is improper....	227

the promotion of a client's interest may justify an attorney for a judgment creditor, as an exceptional circumstance, in the solicitation, through their attorneys, of other judgment creditors similarly situated but ignorant of the facts, to cooperate in enforcing rights against third persons secretly interested in the judgment debtor's business and liable to each upon judgments in their respective favor.....	228
the employment of solicitors by a lawyer conducting quiz classes for law students and compensating them upon the basis of results, is disapproved as against the essential dignity of the profession .....	234
<i>Stationery:</i>	
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its systematic solicitation of its members for professional employment for its attorney is not proper.....	172
should not solicit in connection with such employment a blanket waiver of the client's privilege before it can be known to what disclosures it may extend.....	172

The New York County Lawyers' Association on May 2, 1921, made the following announcement:

ANNOUNCEMENT OF OPINION (WITH THE CONCURRENCE OF THE  
COMMITTEE ON UNLAWFUL PRACTICE OF THE LAW),  
TO THE BOARD OF DIRECTORS.\*

RELATIONS OF LAWYERS AND LAWFUL TRADE ORGANIZATIONS AND  
OTHER ORGANIZATIONS.

This committee appointed a sub-committee to cooperate with a similar sub-committee of the Committee on Unlawful Practice of the Law to consider the relations of lawyers and lawful trade organizations.

The joint sub-committees held a series of hearings and conferences with those especially interested in the subject. The two committees then held joint conferences. After prolonged consideration of the subject and of the cognate subject of the relations of lawyers and collection agencies, this committee has reached its conclusions as follows:

The committee is of the opinion that it should confine itself to the consideration of the propriety of the conduct of the lawyer or of the relation of the lawyer to the organization and the relation of the organization to the lawyer. The committee does not assume to construe existing statute law.

In its opinion (independent of any prohibition imposed by statute) there is no inherent impropriety, professional or otherwise, in the establishment and maintenance of the following relations between a lawyer and a trade organization existing for the benefit of its members:

(1) A lawyer may without professional impropriety, accept employment and compensation from such association, acting as agent for a member, to render professional services in behalf of such member (for example, in making collections or in connection with insolvencies or bankruptcies), though the association has urged its members to refer to it matters involving their common interests, for representation or for such service, provided, however, that the lawyer be careful to avoid assuming inconsistent professional obligations. He should regard and treat the member as his client; and he should not compensate the association nor divide his compensation with it. The committee assumes that the solicitation of such claims by the association is for the common advantage of its members and not for the purpose of obtaining employment for the lawyer; if the latter were its purpose the committee would regard such solicitation as improper; in short, where the employment is an incident of the advantage to the members, the fact that the claims are solicited for the latter purpose, should not preclude the lawyer from accepting the employment, while, if the end in view is the solicitation of employment for the lawyer, he should not permit such solicitation in his behalf, nor accept the employment so solicited.

(2) A lawyer may, without professional impropriety, accept employment and compensation from such association in its own behalf, to perform for it professional services in the promotion of its interests and the common interests of members; and in such employment may properly render the services, in the interest of the association and of its members, of which the following are illustrations.

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\*(Publication and circulation authorized by the Board of Directors, May 2, 1921.)

though not exclusive of others of a similar nature: Advice to the association; representation of a group of creditors; filing of petitions on behalf of committees; acceptance of proxies; inter-communication between creditors; prosecution of fraud; investigation of fraud; advice to members where the interests of the association are affected; appearance before legislative bodies in behalf of interests represented by the association; preparation of settlement agreements; reorganization of business enterprises; cooperation with other bodies and associations.

The fact that the association has organized creditors as a group, or has organized committees, or has secured proxies, or has in other ways promoted the activity of its members, is not, in the opinion of the committee such a solicitation of business for the lawyer as to preclude his acceptance of the employment; always provided, the solicitation is in the interest of the association or its members; and that its object is not to solicit business for the lawyer under the disguise of the association.

In such case also the lawyer should observe the same precautions above mentioned (under 1 above).

The committee is led to distinguish lawful trade organizations from collection agencies, in that trade organizations are a cooperative effort to unite the activities of those having a common object, in which all are alike interested, and in which they are uniting through the association in employing legal services for the common end. In the opinion of the committee the employment of a lawyer to promote this common interest as above indicated contains no element of inherent professional impropriety.

But, as usually conducted, a collection agency exists for its own profit, is an independent contractor, does not exist for cooperative purposes, and solicits business for its own ends, though it doubtless promotes the interests of its customers or it could not exist. When in behalf of a customer it acts as his agent and transmits a claim or employs a lawyer, such employment, in the interest or on behalf of its customer, is not, in the opinion of the committee inherently improper, provided it is free from divided allegiance or inconsistent obligation, and provided it is not permitted to deprive the lawyer of the untrammeled relation of fidelity to the customer, which is of the essence of professional duty. Since the interests of the collection agency unlike those of the trade organization, are not identical with the interests of those whom it undertakes to represent, its solicitation of business is for its own ends; while it may properly employ a lawyer as its own adviser, and to represent it, in the opinion of the committee, the employment by it in its own behalf, of a lawyer to represent its customers, is the exploitation of his services for its profit, as an intermediary between client and attorney; and this the committee has always regarded as not professionally proper (whether or not prohibited by statute); for the reason that the exploitation of the office of the lawyer for the profit of another is an abuse of its functions, the solicitation of business for the common advantage of the agency and the lawyer is solicitation for the lawyer, and the obligation to the agency should not be permitted to supersede or interfere with the primary obligation to its customer.

The same principles which apply to the conduct of the lawyer for the trade organization, of course, apply to the conduct of the lawyer for the collection agency.

Upon the same principles which apply to trade organizations, a lawyer if not prohibited by statute may in the opinion of the committee, without professional impropriety accept employment and pay from associations of employees, or employers or any other body of persons having common or similar interests, organized and employing the lawyer for the promotion of such interests.

These views were reported to The American Bar Association by its Committee on Commerce, Trade and Commercial Law in its annual report for 1923, and upon the recommendation of the committee, certain declarations embodying them in substance were adopted by the Association (Annual Report, 1923, Vol. XLVIII, pp. 60, 285).

The rules of the Alabama State Bar (No. 23) condemn the gift or promise of a consideration for placing business in the hands of a lawyer.

But nothing contained in this rule shall be construed as prohibiting the division of fees with a forwarder of business whether an attorney or a reputable collection agency.

## 28. STIRRING UP LITIGATION, DIRECTLY OR THROUGH AGENTS.

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attachés or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

### ANNOT.

Stirring up litigation and other unprofessional conduct, ground for disbarment, see Attorney and Client, Cent. Dig. §§ 47-84; Dec. Dig. §§ 34-61.

Barratry in general, see Champerty and Maintenance, Cent. Dig. §§ 1-51; Dec. Dig. §§ 1-6.

The Committee on Professional Ethics of the New York County Lawyers' Association, in answer to inquiry, has expressed the following views:

<i>Information:</i>	Question
demanding compensation for the disclosure of information, material to pending litigation is unprofessional.....	6
claiming to have information to enable a lawyer to collect a judgment and soliciting employment to collect it is unprofessional .....	69, 91, 227
volunteering information for use in pending litigation concerning infringement of patents, or for use by competitors of patentees on condition that compensation be paid therefor is improper....	150
it is not improper for a lawyer who is an inventor, to file applications for patents and to use his knowledge of patent law or of scientific principles to further the sale of his patent rights.	150
an attorney should not, voluntarily and unsolicited, inform strangers of facts unknown to them upon which they can predicate legal rights, where the attorney would probably be employed to prosecute the rights, and this to prevent the National Government from collecting an illegal tax, though the attorney does not solicit the employment (majority opinion).....	199
volunteering of information and advice to induce employment to procure decree of annulment of marriage is not professionally justifiable .....	224
where a lawyer informs the attorney for a judgment creditor, that he has information to enable him to collect an unsatisfied judgment, and seeks employment to enforce it, for a fee to be shared between the two lawyers, the attorney should communicate the offer to his client, advising him of the risks and the character of the work.....	227
the practice of the soliciting attorney is disapproved, though there may be cases in which the communication, not conditioned on employment, would be proper.....	227
the sharing of the fee should be with the knowledge of the client, and based on service or responsibility.....	227
 <i>Informer:</i>	
may be compensated by a client for information; but not by the division of the lawyer's fees; the lawyer may adjust his fees to enable the client to compensate the informant.....	113
the promotion of a client's interest may justify an attorney for a judgment creditor, as an exceptional circumstance, in the solicitation, through their attorneys, of other judgment creditors similarly situated but ignorant of the facts, to cooperate in enforcing rights against third persons secretly interested in the judgment debtor's business and liable to each upon judgments in their respective favor.....	228
 <i>Patentee:</i>	
though he be a lawyer, may properly use his knowledge and information respecting the history of the art to enable him to market his patent as not an infringement on other patents.....	150

	Question
<i>Patents:</i>	
a lawyer, admitted to practice before the United States patent office, may not, properly voluntarily offer to sell his knowledge for use in pending litigation, or to patent attorneys of competitors of patentees.....	150
he may properly utilize such knowledge to enable him to market his own inventions.....	150
<i>Power of Attorney:</i>	
may properly be granted by a spouse to appear for him in a foreign court in a divorce action instituted against him, in order to give validity to the decree.....	171
<i>Stirring Up Litigation:</i>	
is improper .....	73
a lawyer should not enter into an arrangement, which is a device for systematically obtaining business for him and stirring up litigation for profit.....	140
by advising strangers, voluntarily and unsolicited, of facts upon which they may predicate legal rights, and upon which they will probably employ the informant an attorney, to enforce them, is professionally improper, though it will prevent the national government from collecting an illegal tax and though the attorney does not solicit the employment (majority opinion).....	99
by advising client that his interest demands the ascertainment of adverse claimants, against covenants of seisin and clear title given to him, and the facts on which such claims rest, is not improper, nor is it improper for such lawyer to select and procure counsel for such claimants to press their claims, when it appears to him that the interests of his client under the covenants demand such course for his proper protection against the covenantor who is seeking to foreclose a purchase money mortgage given by the covenantee.....	210
volunteering of information and advice to induce employment to procure decree of annulment of marriage is not professionally justifiable .....	224

## 29. UPHOLDING THE HONOR OF THE PROFESSION.

Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

## ANNOT.

Learning and good character as necessary qualifications for admission to practise law, see *Attorney and Client*, Cent. Dig. §§ 4, 5; Dec. Dig. § 4.

Right of attorney to institute disbarment proceedings against brother attorney, see *Attorney and Client*, Cent. Dig. § 67; Dec. Dig. § 51.

The honor and dignity of the profession contain implications which the following answers to inquirers illustrate; many of the same answers are collated under other Canons above, because they concern likewise fidelity to a client.

*Answer of Committee on Professional Ethics of the Association of the Bar of the City of New York:*

<i>Duty to Client:</i>	Question
remittance to client as proceeds of collection of attorney's check which is dishonored on presentation for want of sufficient funds and ignoring of repeated demands for its payment, is grossly unprofessional .....	9
demand by attorney that broker's commission be divided with him, on pain of advising his client not to complete the transaction, is unprofessional .....	11
<i>Will:</i>	
it is not necessarily improper for a lawyer to draw for a client, a will which names the lawyer as executor and trustee, with power of sale, without bond.....	14
<i>The Committee on Professional Ethics of the New York County Lawyers' Association</i> , in answer to inquiry, expressed the view:	
<i>Business:</i>	
a lawyer may carry a loan-brokerage and real estate business, but with due observance of the standards of conduct required of a lawyer.....	114
in advertising such business he should avoid solicitation of professional employment, or of business or employment because he is a lawyer.....	114
but the practice has a tendency to lower the essential dignity of the profession.....	114
a lawyer may engage in business in his own name, though he continues to practise law; but he should duly observe the standards of conduct required of his as a lawyer.....	179
the business should not be a means of soliciting professional employment, or of business because he is a lawyer.....	179
a number of members do not favor the use of the lawyer's name as the name of a corporation, or of a trade or business organization .....	179
<i>Canadian Lawyer:</i>	
the committee expresses no opinion upon the duty of a Canadian lawyer, not intending to practise law in New York.....	214

<i>Card:</i>	Question
a New York lawyer's card should not announce his association with a foreign lawyer in the practise of law, without clearly disclosing that the foreign lawyer does not intend to practise law in New York.....	23
it is not a proper practice for a clerk (not admitted to the Bar) to have cards printed showing that he is connected with a lawyer's office .....	49
an advertisement of the card of a patent attorney, that he secures patents, or that he was formerly an examiner in the United State Patent Office, is not improper.....	58
it is not improper for a lawyer, specializing in income tax matters, to advertise by card in daily and trade papers, that he is an income tax consultant.....	195
the cards and stationery of a law firm should not represent a layman as conducting or managing a department of the lawyer's professional business .....	212
<i>Clerk:</i>	
a law firm should not hold out a clerk, not a member of the Bar, as a lawyer by placing his name on their door.....	79
a clerk of the lawyer for an assignee for creditors should not purchase from the assignee claims belonging to the estate.....	116
having purchased he should treat the proceeds of the claim as a trust fund .....	116
<i>Client:</i>	
a lawyer should not delegate his professional functions to his client .....	102
<i>Collections:</i>	
a lawyer may make a specialty of collections; but he should not cloak his identity under a trade name; his advertisements should consist of a simple professional card, and he should not generally solicit employment.....	47-i-b
the division of fees between a lawyer and a collection agency is improper .....	47-ii-a
a lawyer who makes a collection, entrusted to him by a collection agency, as the authorized agent of its patron, may properly remit the proceeds to the agency.....	51
the making of collections by a lawyer is professional employment; and in such employment he should not use an assumed name, nor employ solicitors to secure the business; but he may undertake collections, with or without litigation; or maintain a mercantile agency, and may recommend another lawyer for employment by his clients; but any division of fees with another lawyer should be based on the sharing of professional responsibility or service; and a division merely because of the recommendation is improper.....	82
a lawyer should not divide with a layman fees for collections, though earned by him without bringing suit or appearing in court .....	98
a lawyer should not issue blank summonses for the use of his clients' collectors .....	102
a lawyer should not accept employment from one in the collection business to institute actions and draw papers for a patron of the latter for a fee to be paid by the latter.....	121

a lawyer should not accept employment from a Justice of the Peace of another state not admitted to practise law to make collections and share with the Justice his compensation.....	130
<i>Conduct:</i>	
a lawyer selling his own property cannot with propriety knowingly conceal from the vendee liens of which the vendee is ignorant .....	144
<i>Confidential Communications:</i>	
(see additional illustrations under Canon 6, 16, 22, <i>supra</i> , pp. 47, 48, 71, 75.)	
a client's threat of bodily harm to another is not a privileged communication and the lawyer may properly warn the person threatened .....	13
from a client should not be utilized by an attorney against his client, for his own benefit.....	44
an attorney is under no duty to disclose that his client is the owner of property, when the attorney is sued as the owner, for a liability incurred by its owner.....	53
a lawyer, who is employed by another lawyer, should not disclose to a third person with whom he is dealing in behalf of a client of his employer, that client and his employer are in dispute over compensation; and utilize the fact to secure the third person's business for himself.....	59
a lawyer may not properly disclose to police officials his knowledge of the present whereabouts of his client, a confidential communication from the latter, though he has fled from the jurisdiction while under a criminal charge.....	70
a lawyer, in the employ of another lawyer guilty of dishonest practices upon his clients, and of grossly improper professional practices, should not only leave the employment but should lay the facts before a proper committee of a bar association...	78
do not preclude a lawyer from disclosing that his client contemplates the commission of a crime.....	84
a lawyer consulted in a private interest to appear at a public hearing in the guise of a citizen and taxpayer, is under no duty to conceal the fact.....	139
a member of a legal advisory board under the selective service law and regulations may disclose to the local board information received from the registrant tending to establish his correct classification, though it contradicts his answers to his questionnaire or is deliberately withheld or concealed by him. The lawyer is not the registrant's attorney.....	154
it is impolitic for the lawyer in such case to make secret report to the local board without disclosing the fact to the registrant, and counselling and affording him an opportunity to explain or modify his answers to accord with the truth.....	154
a lawyer having learned the business matters of a client in the course of his employment, cannot properly accept employment from another against such client to enforce rights based on such matters, though he has independent sources for such information .....	157
it was received in confidence; he may then abide the determination of the tribunal or official to whom the solution of the question may be committed by statute.....	167

when called upon to disregard the privilege of a client, because of war, an attorney should assert the privilege; but he may with propriety comply with the determination of the functionary charged with the administration of law, acting under color of his office .....	168
if the attorney desires to test the validity or interpretation of the law, under which the demand of disclosure is made by refusing to answer and abiding the consequence, he may do so without professional impropriety.....	168
a lawyer should not without the consent of his client disclose to the United States authorities, information confided to him by the client that he has paid money for preferential treatment in military service.....	169
a lawyer for both husband and wife, but consulted confidentially by the wife in respect to her will disposing of her property derived from the joint labors of husband and wife, cannot properly warn her husband of her intent.....	190
nor should he voluntarily make a suggestion to the husband that such intent is possible (derived from his confidential knowledge). but, if the husband consults him, in respect to his (the husband's) future conduct, the lawyer may with propriety advise him of the legal incidents of his transfer to his wife of the fruits of his labor.....	190
a lawyer is not released from the obligation to keep his client's confidential communications inviolate, by the termination of his employment .....	207
nor is he released thereby from his obligation not to use the information so obtained, in hostility to his former client.....	207
a lawyer who has secured indulgence on account of his ignorance of his client's whereabouts, and who then learns it in confidence, should, in case the benefit so obtained, continues, advise counsel for the adverse party, and in a proper case, the court, that he now knows his client's whereabouts, but that it has been disclosed to him in confidence.....	217
a client who brings a suit for rescission of a contract on the ground, falsely asserted, that he has been misled by his attorney thereby waives his privilege and then his attorney may properly disclose to counsel for the adverse party the communications which he actually made to his client.....	218
<i>Corporation:</i> it is not improper for a lawyer to compensate a corporation for expert evidence respecting the value of property, given by an employee of the corporation.....	57
formation to procure the advice of a lawyer to its members is contrary to the law of New York.....	108
should not practise law nor deal in the professional services of a lawyer .....	179
a lawyer is cautioned that if he grants to a corporation the use of his name in business he may lose control of it; a number of members do not favor the practice.....	179
<i>Dignity:</i> essential professional dignity precludes permitting a third person not a lawyer from furnishing or selling the services of the lawyer.	36

the relation of the writer of a brief to the court is one, the dignity and responsibility of which, is inconsistent with a scheme whereby a printer advertises to furnish briefs written for the profession by able lawyers.....	36
it is requisite that members of the legal profession should aim to preserve its dignity; and the direct and general solicitation of professional employment is undignified.....	46
the division of professional fees with one not a member of the profession detracts from the essential dignity of the practitioner and his profession.....	47-ii-a
it is derogatory to the essential dignity of the profession for a lawyer to seek employment by offering or permitting another to offer a bond to guarantee his honesty or efficiency.....	47-ix-d
it appears beneath the essential dignity of the professional position of an attorney to permit a clerk (not admitted to the Bar) to have cards printed showing that he is connected with the lawyer's office.....	49
the trading by a layman in the professional services of a lawyer detracts from the essential dignity of the profession.....	68
it is derogatory to the dignity of the profession to advertise the handling of deserving cases, whether gratuitously or not... ..	89
it is beneath proper professional dignity for a lawyer to share the fees of an auctioneer whom he employs for a client, though the client knows and consents.....	111
engaging in a loan-brokerage or real estate business, by a lawyer, has a tendency to lower the essential dignity of the profession.. ..	114
for a lawyer to agree with non-professional employees to share his profits with them is inconsistent with the essential dignity of the profession.....	122
the purchase of judgment by a lawyer at a discount for the purpose of enforcing it is beneath the essential dignity of the profession .. ..	160
high standards of professional dignity and propriety conform with public policy.....	172
it detracts from the dignity of the profession for a lawyer to enter into an arrangement with a collection agency or a law list to guarantee his faithfulness in remitting collections.....	185
<i>Disclosure:</i>	
he may properly warn one to whom a client threatens violence.. ..	13
<i>Divorce:</i>	
a lawyer may properly advise both of two successive husbands of the same wife respecting the legality of her marriage to them respectively .. ..	99
<i>Duty to Client:</i>	
employment of two partners on opposite sides of the same controversy, disqualifies each partner from acting for either party, when the fact of the adverse employment is discovered by the partners .. ..	33
a lawyer may, with the consent of his client, act for others to establish their rights upon evidence furnished by the client, of an attempt to defraud them, though the client is implicated....	75

## Question

or with such consent he may refer the defrauded persons to another reputable attorney to act in their behalf.....	75
a lawyer may not with propriety deceive an incompetent client under the advice of his physician that it will benefit him,.....	87
counsel for a municipal body should not advise where he has a conflicting personal interest in the question involved.....	97
a lawyer for a creditor cannot properly accept employment from the debtor to arrange with his other creditors for an extension, exacting as a condition of such employment by the debtor, that he first pay the lawyer's creditor client in full; the debtor is entitled to the impartial advice of his lawyer and fair representation by him to the other creditors.....	123
commissions or rebates received by a lawyer from printers, stenographers, auctioneers or others performing like services should not be concealed from the client; they should be credited to his account with the lawyer.....	124
a lawyer should not accept employment involving the construction of a contract drawn by him for a former having purchased he should treat the proceeds of the claim as a trust fund.....	116
an attorney undertaking to defend in behalf of an indemnitor, an action against the person indemnified, owes a duty to the latter, not to be affected by the interests of the indemnitor....	119
a lawyer for a creditor cannot properly accept employment from the debtor to arrange with his other creditors for an extension, exacting as a condition of such employment by the debtor, that he first pay the lawyer's creditor client in full; the debtor is entitled to the impartial advice of his lawyer and fair representation by him to the other creditors.....	123
commissions or rebates received by a lawyer from printers, stenographers, auctioneers or others performing like services should not be concealed from the client; they should be credited to his account with the lawyer.....	124
a lawyer cannot properly represent two clients whose interests are adverse to each other in respect to the same subject matter; when such a situation arises he should advise the second that his previous connection prevents further representation of the second .....	129
a lawyer cannot properly accept employment from a second client to collect for the latter money which the lawyer has collected under employment from another client and has not remitted, and which his first client has assigned to a debtor of the second client; the lawyer's duty to the first client is not performed until he has remitted the money to the latter or his assignee .....	129
a lawyer should not accept employment involving the construction of a contract drawn by him for a former client, adverse to the claims or interests of his former client.....	151
a lawyer having learned the business matters of his client in the course of professional employment, cannot properly after its termination accept employment from another to enforce rights against such client based on such matters, though he has independent sources of information.....	157

a lawyer having obtained an interlocutory judgment for an adult client in a matrimonial action, and whose compensation is not paid, should either proceed to enter final judgment or signify his willingness to withdraw, advising his client fully of the client's rights under the law.....	158
if, in such case, the client is an infant the lawyer should subordinate his contract rights against the guardian <i>ad litem</i> to his duties to the infant, and proceed to enter final judgment.....	158
though it may not be necessarily improper for a clerk of counsel for the vendor of property to accept, with the consent of the vendor and his counsel, a retainer from the purchaser to be his counsel in the transaction, the clerk after his employment, should understand that his sole professional duty is to the purchaser, to whom he owes the utmost good faith and the conscientious performance of the duty of attorney to the client.....	200
if by reason of his relation to the vendor or his counsel, or of confidential information which he is not free to impart to his client, the purchaser, the clerk cannot do his full duty to the purchaser, he should decline the employment or relinquish it... ..	200
the clerk should not continue in the employ of the purchaser, if he knows or discovers that by reason of his former or existing relations he is not entirely free or willing to do his full duty to the purchaser .....	200
an attorney who has been consulted and has advised a person as his client, should not thereafter accept employment in the same matter antagonistic to such person's interest, though no longer employed by such person.....	207
does not justify lawyer in advising an executrix, who is widow of testator, and residuary legatee, to disregard the rights of a creditor or to resort to a trick or device to defeat them; nor in devising a plan to defeat them.....	211
the lawyer may properly advise such client of his opinion of the client's statutory duty.....	211
a lawyer for a defendant who disappears, and who is unable to communicate with him, should endeavor to secure a postponement, and if forced to trial should state the situation to the court and request it to make a disposition to protect the client's rights .....	216
if still forced to trial, he may exercise his judgment under the particular circumstances whether he should participate in the trial to prevent injustice.....	216
<i>Employee:</i>	
an employee, a lawyer, should not solicit professional employment from the clients of his employer.....	109
the acceptance by a clerk of counsel for the vendor of property, of a retainer, with the consent of the vendor and his counsel, to act as counsel in the transaction for the purchaser, while not necessarily improper, is not to be commended as a practice because of its obviously possible dangers.....	200
<i>Executor (Executrix):</i>	
not entitled to receive fees for legal services, should not receive a part of the fees allowed to his legal counsel; nor should such division be concealed from the court which allows such counsel fees .....	26

## Question

a lawyer is not justified in advising his client, an executrix, and also the widow and residuary legatee of the testator, to disregard the rights of a creditor, or to resort to a trick or device to defeat them .....	211
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the lawyer in such case may not properly disclose to police officials his knowledge of the client's present location, acquired from his client in confidence.....	70
<i>Husband and Wife:</i>	
a lawyer may properly accept employment from each of two successive husbands of one wife to advise them respecting the legality of her marriage to one of them, and may accept a fee from each of them for his advice and may accept employment from one, to which the other contributes, to secure a decree annulling one of the marriages.....	99
a lawyer employed by a wife to prosecute her husband, may after the withdrawal of the charge, accept employment from the husband and wife to defend the husband against another criminal charge .....	152
an attorney may, without impropriety, after an interlocutory decree procured by him for a wife, accept her husband's offer, made with the consent of the wife, but without the attorney's previous knowledge or procurement, to pay him the amount of his fees, previously agreed upon between the attorney and the wife, and he may properly proceed to enter the final decree—the attorney being satisfied from previous investigation that the offence was not collusive, and that the payment will not impair the husband's ability to pay alimony for the support of the wife and a child.....	229
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a lawyer may properly accept employment from the wife of an incompetent client to have him so declared.....	88
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<i>Inconsistency:</i>	
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counsel for a municipal board should not advise where he has a personal interest in the result of his advice.....	97
an attorney undertaking in behalf of an indemnitor, to defend an action against the person indemnified, owes a duty to the latter, which is not to be affected by the interests of the indemnitor .....	119
an attorney for an indemnitor may properly, in behalf of the latter, undertake to defend an action against the person indemnified, notwithstanding the latter is suing the indemnitor; but the attorney's performance of his duty to the person indemnified, is not to be affected by interests of the indemnitor.....	119
a lawyer should not, while continuing as legal adviser of his client, even with the client's consent become a petitioning creditor against his client in bankruptcy; but having become a petitioning creditor, he should not act as attorney for the bankrupt in the proceeding.....	143
lawyer for patentee, drawing license contract for him, may not properly thereafter accept employment from the licensee to defend an action by the patentee against the licensee arising out of the contract, either as attorney or counsel or to consult in the licensee's interest, the latter's attorney or counsel.....	151

*Indemnity:*

an attorney undertaking in behalf of an indemnitor to defend an action against a person indemnified, owes a duty to the latter, which is not to be affected by the interests of the indemnitor...	119
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*Infant:*

a lawyer may properly accept employment from a guardian to represent his ward in a matrimonial action, though the lawyer's compensation is paid to the guardian by the adult spouse, provided the facts are disclosed to the court.....	128
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a lawyer who has secured an interlocutory judgment in a matrimonial action in favor of an infant, but whose compensation is unpaid, should subordinate his contract rights against the guardian <i>ad litem</i> to his duty to the infant, and should proceed to enter final judgment.....	158
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a lawyer employed to prosecute the rights of an infant, should not accept compensation from the insurer of the adverse party without full disclosure of the fact to the court—and in any event (except where a rule of court provides adequately for the protection of the infant's interests), the practice is not to be commended .....	183
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*Insurer:*

where an offer is made to purchase from a judgment creditor a judgment against two tort feasors, and the creditor's attorney suspects that the motive underlying the offer is to enable the insurer of one of the debtors to enforce the judgment against the other and then claim that the debt is thus discharged and the obligation of the insured released, the attorney should put the facts before the creditor for the exercise of his own moral judgment, but the suspected motive of the purchaser is not sufficient reason to deter the attorney from advising his client to accept the offer, if he is so inclined.....	162
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<i>Law Student:</i>	
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nor is it improper to secure an order in accordance with the stipulation .....	191

The committee in its detailed explanation of its activities prefixed to its published analysis of its answers to questions (1 to 229) included the following expression of its view:

#### PROFESSIONAL DIGNITY.

Some critics think that professional dignity savors too much of pompous pretension to appear as a factor in legal ethics. But instances appear in which the committee assigns only the preservation of dignity as the reason for its advice. It has usually characterized such dignity as *essential*. It believes that the conservation of professional repute, of confidence and a reciprocal sense of responsibility and obligation demand a certain minimum degree of dignity in deportment of the lawyer. This conception of the implications of the office is beneficial for its

psychological effect upon both client and lawyer, and in a larger field upon the public and the profession. In general, professional flippancy and the sense of responsibility to others cannot co-exist. More likely one who has no sense of seriousness in his office cannot cherish such sense of responsibility as will enable him to carry out his obligations. One who lacks a perception of normal self-respect is a misfit when he assumes to care for others; and whether or not it impairs his own ability, it is more than likely to impair the confidence of others in him. For his own sake, as well as for the sake of his profession, the committee suggests, when interrogated respecting activities which the committee deems inconsistent with the responsibilities of the office, but which are not inherently vicious, that the conduct is, at least, beneath the essential dignity of the office; and that the lawyer owes the observance of this essential dignity both to himself and his profession. In so advising the committee advocates not pomposity, or pretense, but only that a lawyer, by reason of his responsibilities and his duties should never relax into professional habits which tend to render him less fit to fulfill them.

### 30. JUSTIFIABLE AND UNJUSTIFIABLE LITIGATIONS.

The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the court as to the legal merits of his client's claim. His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

#### ANNOT.

Nature and extent of attorney's duty as to bringing, defending, or conducting civil causes, see Attorney and Client, Cent. Dig. §§ 217, 220; Dec. Dig. §§ 106, 108.

Bringing fictitious or unauthorized action as constituting contempt, see Contempt, Cent. Dig. § 24.

#### *Litigation:*

Question

preparation for trial should be by or under the direction of an attorney, who may be held responsible, and not by a lay intermediary ..... 74

### 31. RESPONSIBILITY FOR LITIGATION.

No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own respon-

sibility must decide what business he will accept as counsel, what causes he will bring into court for plaintiffs, what cases he will contest in court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

#### ANNOT.

Duties and liabilities of attorney to adverse party and third persons, and instructions of client as excuse for conduct, see Attorney and Client, Cent. Dig. §§ 38, 39, 220; Dec. Dig. §§ 26, 108.

Nature of attorney's duty, and skill and care required in conduct of business, see Attorney and Client, Cent. Dig. §§ 217, 218; Dec. Dig. §§ 106, 107.

#### 32. THE LAWYER'S DUTY IN ITS LAST ANALYSIS.

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

## ANNOT.

Duties, privileges, disabilities, and liabilities of attorneys in general, see *Attorney and Client*, Cent. Dig. §§ 21, 26-29, 217-291; Dec. Dig. §§ 18-21, 106-129.

Acting under advice of counsel as defense to contempt charge, see *Contempt*, Cent. Dig. § 82; Dec. Dig. § 28 (2).

Many of the preceding Canons and the illustrative answers collated under them illustrate specific duties; others are illustrated by the examples collated below:

The *Committee on Professional Ethics of the New York County Lawyers' Association*, in answer to inquiry, expressed the view:

Advice:	Question
to a client to violate a penal statute is improper.....	27

The following is an extract from the detailed explanation of the activities of the *Committee on Professional Ethics of the New York County Lawyers' Association*, prefixed to its published analysis of its answers to questions (1 to 229) :

The penal law of New York makes it a misdemeanor to practice law without being duly admitted (Penal Law, s. 270). It is a misdemeanor for a lawyer to pay one not a lawyer for procuring employment to bring suit (Penal Law, s. 274); the Court of Appeals of New York, deriving its power from the Constitution of the state, has disapproved the conduct of a lawyer who procured employment through cappers paid by him. (Matter of Clark, 184 N. Y. 222). It is a misdemeanor for a corporation to undertake to furnish the services of a lawyer or to practise law (Penal Law, s. 280); the Appellate Division of the Supreme Court has censured lawyers for enabling a corporation to violate this law, by aiding it in furnishing the legal service (Matter of Pace, 170 App. Div. 818). A recent amendment makes it a misdemeanor for a natural person to make it a business to solicit employment for a lawyer, or to furnish attorneys or counsel or an attorney and counsel to render legal services (Penal Law, s. 270, ch. 783, Laws 1917). This amendment has been held to be a constitutional exercise of the police power because such business tends to stir up litigation and may be a public evil (People v. Meola, 193 App. Div. 487). It seems to the committee that they cannot ignore these provisions of law, nor their reasonable implications, and refuse to advise inquirers of their opinion, when in their opinion contemplated conduct involves the danger of violating these statutes and the public policy adopted therein.

The attitude of the committee toward division of fees, the solicitation of employment and related subjects is largely influenced by a recognition of the purpose of these statutes. In some respects the committee is guided by accepted tradition in the profession. As for the acceptance of group retainers of trade associations or labor unions for service to individual members, the committee in its announcement of May 2, 1921, said:

"Upon the same principles which apply to trade organizations, a lawyer, if *not prohibited by statute*, may, in the opinion of the committee, without professional impropriety, accept employment and pay from associations of employees, or employers or any other body of persons having common or similar interests, organized and employing the lawyer for the promotion of such interests."

In that announcement the committee expressed the opinion that the exploitation of the office for the profit of another is an abuse of its functions.

The majority of the committee has always been convinced that leaving matters to the individual conscience of the lawyer is not the safest guide where practical responsibility to others is involved. While recognizing that a lawyer ought not to violate his own conscience by his conduct, they also recognize that his conscience, especially if uneducated in the standards of others, may lead him to consider solely his own advantage, or to neglect or impair the interests of others, and that a variety of individual consciences without common standard, would promote perpetual conflict, would bring about confusion of ideals, would permit every lawyer to do as he pleases, and end in destroying both the public confidence and the standards which promote that confidence. Too many practitioners with easy consciences have felt at liberty to abuse their professional privileges and neglect their professional duties. The committee feels that its work would be useless if it should accept the view that there are and should be no professional standards except those dictated for each man, by his uninstructed conscience. Conscience has been aptly defined as the conscious law of individual life established by individual habit in the midst of individual environment. But such self-made law may infringe the rights and defeat the legitimate expectations of others. When one assumes representative and advisory relations to others, he must forego some of his individual freedom of action.

Notwithstanding efforts to persuade the committee that freedom of individual action should be the dominating principle and that, all answers should be, in substance, that *the inquirer should do as he thinks right*, the committee has felt otherwise and has given the inquirer what the joint judgment of the majority of the committee members deems right, based upon their experience and reasoning.

It is the fixed belief of the majority that the committee would never have been created or continued unless the association had intended that it should perform this function.

#### *Alien Enemies:*

Question

it is not improper for a lawyer to accept employment to interview interned alien enemies, for the purpose of securing to them their legal rights, including release upon writs of *habeas corpus*. 148

#### OATH OF ADMISSION.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other States of the Union\*—duties which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

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\* Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wisconsin. The oaths administered on admission to the Bar in all the other states require the observance of the highest moral principle in the practice of the profession, but the duties of the lawyer are not as specifically defined by law in the states named.

[The foregoing foot-note was appended to the above form of Oath as published at the time of the adoption of the Canons of Professional Ethics in 1908. It does not indicate any subsequent changes of form or requirement of Oath by later state legislation.]

*I DO SOLEMNLY SWEAR:*

*I will support the Constitution of the United States and the Constitution of the State of.....;*

*I will maintain the respect due to Courts of Justice and judicial officers;*

*I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;*

*I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;*

*I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;*

*I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;*

*I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.*

We commend this form of oath for adoption by the proper authorities in all the states and territories.

In a recent Wisconsin decision it was said to be a violation of the lawyer's oath to interpose an answer in a suit brought against the attorney personally which answer advanced facts prejudicial to the plaintiff's honor and reputation (unless required by the justice of the cause)—*In re Richter*, 204 N. W. Rep. 492.



### III.

#### LOCAL RULES AND CANONS OF ETHICS.

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### III.

#### LOCAL RULES AND CANONS OF ETHICS.

Many state and local bar associations have adopted the Canons of the Professional Ethics of The American Bar Association; some associations have adopted their own Canons.

The report of the Committee on Code of Professional Ethics of The American Bar Association, 1907 (vol. XXXI Reports American Bar Association, pp. 676-736) contained a compilation of the codes of the state bar associations of 11 states; and also the Louisiana Bar Association's Code of Ethics, from its Charter of 1899, the lawyer's oath in the State of Washington, the Oath for Advocates prescribed by the laws of the Swiss Canton of Geneva, the Lawyers' Prayer of Samuel Johnson, the Regulations Concerning Lawyers in the Code of Christian V of Denmark and Norway, David Hoffman's Fifty Resolutions in Regard to Professional Deportment, and the Oath Administered to Lawyers in Germany on admission to the Bar of the respective monarchial states.

There was also reprinted for The American Bar Association—as Volume XXXI of its Reports, 1907—An Essay on Professional Ethics, by George Sharswood.

Local rules and Codes of Ethics have been adopted by some associations since the above-mentioned report of 1907: others have been proposed in some associations, but the present compiler is not advised of their adoption.

Canons or rules and regulations have been adopted by the Canadian Bar Association, the Ontario Bar Association, the Bar of the Province of Quebec, and the Bar of Montreal. These are not appended because they lie outside of the territory of The American Bar Association.

The following Canons or rules have been adopted by certain state or local bar associations or organizations:

## A.

## RULES GOVERNING THE CONDUCT OF ATTORNEYS.

## As APPROVED BY THE SUPREME COURT OF ALABAMA.

It shall be the duty of all persons heretofore or hereafter admitted to practice law in the State of Alabama to :

1. Observe and comply with each and every clause and portion of the oath of office of an attorney, as the same is prescribed by Section 2978 of the Code of Alabama of 1907, and as the same may be amended from time to time.
2. Maintain the respect due to the judicial officers and the Courts of Justice, state or federal, within the State of Alabama.
3. Employ for the purpose of maintaining the causes confided to them such means only as are consistent with truth, and never seek to mislead the judges by any artifice, or false statement of the law.
4. Maintain inviolate the confidence, and at every peril to themselves to preserve the secrets of their clients.
5. Abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party, or a witness, unless required by the justice of the cause with which they are charged.
6. Encourage neither the commencement or continuance of any action or proceeding from any motive of passion or interest.
7. Never reject for any consideration personal to themselves the cause of the defenseless or oppressed.
8. Refrain from seeking a reconsideration of the judgment of an Appellate Court by appealing to any justice or judge, by letter or otherwise, to reinstate the cause on the rehearing docket after the application for rehearing has been acted upon by the court, nor by such method seek a rehearing after a default in applying for same. Counsel should present their argument in open court or by brief, after serving copy on the other side, and should therefore refrain from discussing the merits of the cause with a justice or judge, by letter or otherwise, either pending the original consideration or upon rehearing.
9. Refrain, except in open court or in the presence of opposing counsel from arguing or discussing in person, by letter, or other communication, the merits of any case with any judge or court before whom the same is pending, unless a copy of such argument, discussion or communication be furnished opposing counsel. In order that a proper respect for and consideration of the integrity and character of all courts may be had and promoted, the conduct forbidden by this rule is deemed unethical and improper.

No person heretofore or hereafter admitted to practice law in Alabama shall :

10. Appear under, or hold himself out as appearing under or as having the right to receive for or transact any legal business for or in the name of another without being authorized so to do.
11. Permit the use of his name as an attorney by any other person who is not then licensed to practise law.
12. Suppress or stifle any evidence or testimony.
13. Use the name of or be associated in the practice of law with any person who is disbarred, or who, at the time of such use or association, is suspended.

14. Wilfully advise any client or person to disobey any valid order of a court, either state or federal.

15. Wilfully disobey or violate the legal order of any court, state or federal, requiring him to do or to forbear any act growing out of or relating to, or in any wise connected with his professional duties or to the conduct of his profession.

16. Introduce or offer to introduce any testimony which he knows to be false or forged.

17. Fail to offer to exclude, or omit to disavow, disclaim and seek the elimination from the case of, any false or forged testimony, promptly, upon learning that the same is false or forged.

18. Represent a party or his successor to a cause, after having previously represented the opposite party or interest thereto, in connection therewith.

19. Fraudulently procure, or aid in the fraudulent procurement of admission to practise, either by wilfully misrepresenting the facts as to his or another's qualification for admission or by fraudulently suppressing information at the time of or prior to such admission, and having relation to his or another's character, fitness, or qualification to practise.

20. Solicit his employment or professional engagement or the employment or professional engagement of another whose partner he is, or from whose employment there is any expectation of profit or benefit, directly or indirectly, to himself.

21. Employ any person to seek for, secure, obtain or procure a client or professional business for himself, or for another whose partner he is, or for another from whose employment there is any expectation of profit or benefit, directly or indirectly, to himself.

22. Promise or give or offer to promise or give, any valuable consideration to any person as an inducement to placing in his hands or in the hands of any partnership of which he is a member, or in the hands of any person from whose employment there is any expectation of profit or benefit, directly, or indirectly, to himself, of a claim or demand or an item of business of any kind.

23. Promise or give, or offer to promise or give, a valuable consideration to any person in consideration of having placed in his hands, or in the hands of any person from whose employment there is any expectation of profit or benefit, directly or indirectly, to himself, of a claim or demand or item of business of any kind.

But nothing contained in this rule shall be construed as prohibiting the division of fees with a forwarder of business whether an attorney, or a reputable collection agency.

24. Improperly falsify, alter or abstract any court record or pleadings.

25. Knowingly or wilfully make any false representations of fact to any judge, court or jury to induce a favorable action or ruling by either.

26. Falsey and maliciously use any language, spoken or written, which has any reference, directly or indirectly, to the official acts or official conduct of any judge or of any court, state or federal, reflecting upon either the honor, integrity or character of any such judge or court.

27. Misappropriate the funds of his client, either by failing to pay over money collected by him for his client, or by appropriating to his own use funds entrusted to his keeping, provided the circumstances attending the transaction are such as to satisfy the commission that the attorney acted in bad faith or with fraudulent purpose.

28. While a partner of any Register of the Circuit Court practise in the court of which his partner is such Register.

29. While a partner of, or associated in the practice with any prosecuting attorney defend any criminal case of any kind, character or description in the court in which such partner or associate is the prosecuting officer.

30. Refuse, fail, neglect or omit to promptly surrender in the manner provided by law his license to practise law as an attorney upon his final conviction by any court of record of this state or of the United States or of any other state, of any misdemeanor which, according to the law of the forum trying the cause, involves moral turpitude.

31. Accept employment in any action for damages for personal injuries or any action under the Homicide Act or participate in the fees accruing from such cases, knowing that the same was brought to him by or sent to him through the influence of any person in his employ whose duty in whole or in part is to conduct or make investigations of any kind.

32. Accept employment in any action for damages for personal injuries or action under the Homicide Act from a person, firm or corporation engaged or partly engaged in the business of investigation or adjusting such matters and claims.

Any attorney who shall fail to observe or shall fail to comply with any of the requirements or rules numbered from one to nine, both inclusive of Section (A) hereof may be the subject of disciplinary action by public or private reprimand or by suspension from the practice of law not to exceed one year.

Any attorney who shall do or be guilty of any of the acts forbidden or prohibited by any rule numbered from 10 to 32, both inclusive of Section (A) hereof, may be the subject of disciplinary action by public or private reprimand suspension from the practice of law or exclusion and disbarment therefrom.

The following classes of persons shall be disbarred from the practice of law:

33. Any attorney who has become permanently insane.

34. Any attorney who has been convicted by any court of record of this state, or of the United States, or of any other state, of a criminal act, which by the law of the forum trying the case is a felony.

But no attorney shall be the subject of disciplinary action for any action on his part who has, prior to such action, submitted in writing the specific question to the Grievance Committee and received from such committee its written opinion that such action was justifiable or permissible.

## B

### CANONS OF PROFESSIONAL ETHICS FOR PRACTITIONERS OF PATENT LAW ADOPTED BY THE CHICAGO PATENT LAW ASSOCIATION, DECEMBER 12, 1924.

#### PREAMBLE.

The Canons of Professional Ethics of The American Bar Association are hereby adopted and shall, whenever applicable, control the conduct of every practitioner before the Patent Office

and in the courts. To the reasons set forth in the preamble to the Canons of Professional Ethics of The American Bar Association there is added the following: The Patent System is so important and so far reaching in its influence, and its success is so dependent upon merited public approval, that it should be brought to and maintained at a high point of efficiency. It should also be so administered as to inspire public confidence in its integrity and impartiality. The character, reliability and professional standards of persons holding themselves out as qualified to practice in the Patent Office and in the courts should also inspire and deserve public confidence.

As an aid to these desirable ends, the following Canons of Ethics, supplementary to the general Canons of The American Bar Association, are also adopted as a guide for the conduct of practitioners of Patent Law, whether in the Patent Office or in the courts:

1. *Advertising*.—All advertising or soliciting of business should be limited to the use of business cards, or their insertion in directories or business guides, including business listings of newspapers. These cards and advertisements should contain only the name, address and telephone connections of the circulator or advertiser, and a statement of the professional service offered. No reference for advertising purposes should be made to membership in any professional association, or to any activities therein.

2. *Soliciting Business*.—Any circulation of the public, offering advice before it is asked or volunteering information regarding patent, trade-mark or copyright law, or instructions relating to applications for patents or registrations, or making any other unsolicited approach, is improper.

3. Stimulation of the development and patenting of inventions by the enumeration of inventions alleged to be desired by the public, or the citation of instances of great profit made by inventors, or the offering of services for grossly inadequate fees (whether or not the fee shall be increased in the event of success), for the purpose of securing business; or cultivating business by a "no patent—no pay" guarantee; or offering to publish or sell the patent when secured (unless the offer is reasonably explained and subjected to proper reservations) is improper.

4. Recommending trade-mark opposition or cancellation proceedings, except when justified by personal or professional relations (and then only in obviously proper or debatable cases) is condemned. Hunting up or developing other possible patent office *inter partes* proceedings and advising action thereon unless warranted by personal or professional relations is also condemned.

5. *Encroaching upon Another's Practice*.—Efforts, direct or indirect, in any way to encroach upon the business of another are unworthy of those who should be brother practitioners. It is not unethical, however, at the request of a client, to accept employment in matters already in the hands of other counsel after communicating with the counsel already employed.

*6. Duty to the Uninformed Client.*—The uninformed or inexperienced client should be told whether or not it is advisable to have a preliminary examination made before incurring any application expenses, and if such examination is made, actual copies of the pertinent references should be furnished to him. If, in the opinion of the solicitor, the invention submitted is substantially anticipated, the client should be so advised, and discouraged from filing an application.

*7. Foreign Applications.*—It is improper to encourage the filing of applications for foreign patents without fully informing the client of recurrent taxes, workings, and other requirements of foreign laws.

*8. Misconduct of Attorneys.*—To uphold the honor of the profession and to improve its administration, it is the duty of every practitioner who may have knowledge of any violation of Section 487, as amended February 18, 1922, 67 Statutes at Large, or by Rules 17 (h) and 22 (c) of the Rules of Practice, U. S. Patent Office,\* to inform the appropriate

\* Sec. 487, as amended, is as follows:

Patent-agents or attorneys; rules and regulations for; suspension or exclusion from practice. The Commissioner of Patents, subject to the approval of the Secretary of the Interior, may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing applicants or other parties before his office, and may require of such persons, agents, or attorneys, before being recognized as representatives of applicants or other persons, that they shall show that they are of good moral character and in good repute, are possessed of the necessary qualifications to enable them to render to applicants or other persons valuable service, and are likewise competent to advise and assist applicants or other persons in the presentation or prosecution of their applications or other business before the office. And the Commissioner of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before his office any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who refuses to comply with the said rules and regulations, or who shall, with intent to defraud in any manner, deceive, mislead or threaten any applicant or prospective applicant or other person having immediate or prospective business before the office, by word, circular, letter or by advertising. The reasons for any such suspension or exclusion shall be duly recorded. And the action of the commissioner may be reviewed upon petition of the person so refused recognition or so suspended or excluded by the Supreme Court of the District of Columbia under such conditions and upon such proceedings as the said court may by its rules determine.

Patent Office Rule 17-h is as follows:

Every attorney registered to practise before the United States Patent Office shall submit to the Commissioner of Patents for approval copies of all proposed advertising matter, circulars, letters, cards, etc., intended to solicit patent business, and if it be not disapproved by him and the attorney so notified within 10 days after submission, it may be considered approved.

Any registered attorney sending out or using any such matter, a copy of which has not been submitted to the Commissioner of Patents in accordance with this rule, or which has been disapproved by the Commissioner of Patents, shall be subject to suspension or disbarment.

Patent Office Rule 22-c is as follows:

For gross misconduct the Commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for the refusal will be duly recorded and be subject to the approval of the Secretary of the Interior.

tribunals thereof and to assist, if requested by the proper officials, in the presentation of the facts concerning any such acts, to the end that the offenders may be warned, reprimanded or disbarred.

9. *Attitude Toward the Patent Office.*—It is the duty of every practitioner before the Patent Office to be as concise and direct as possible in the prosecution and disposition of all cases. Frankness toward the Patent Office should always be observed. It is also the practitioner's duty, whenever any controversy of any nature will admit of fair adjustment, to advise the client to avoid or to end the litigation.

10. *Use of Corporate or Fictitious Names.*—Patent, trade-mark and copyright services being largely a matter of personal relations and mutual confidence between the solicitor and the client, it is improper to perform any professional services under any corporate name or other title than one's individual or partnership name. Firm names should include only the names of present or past active partners.

11. Partnerships or other associations for the performance of professional services, either in or out of court, should not hereafter be formed between members of the Bar and non-members.

Firm names or titles which include the name of a person not a member of the Bar should not be used.

This Canon is made of future application, only for the purpose of preventing injustice which might otherwise result. It is recognized that the conduct of business before the Patent Office requires special qualifications and experience, and that the Patent Office Register of persons admitted to practice there contains the names of many reputable men of long and honorable practice, who are not members of the Bar. Therefore, such partnerships as may now exist between members of the Bar and such Patent Office practitioners, shall not be deemed a violation of this Canon, nor shall the continuation of the use of existing firm names or titles which may include the names of such persons. Distinction should be made in connection with the use of such firm name or title between the qualifications of those members of the firm who are members of the Bar, and those who are not.

12. It is unprofessional for a member of the Bar, or a person admitted to practise before the Patent Office in any manner to lend his services or the privileges he enjoys as such, to any corporation, or layman, or group of laymen, who solicit legal business from the public, or hold themselves out as equipped to perform, or to obtain the performance of, any legal services or any services requiring in their conduct a member of the Bar, or a person admitted to practise before the Patent Office.

13. *Association with Disbarred Attorney.*—Professional association with any disbarred or discredited attorney in such a way as in any manner to avoid, relieve or abate the effect of his disbarment or discredit, or confer upon him any benefits or emoluments derived from such professional association, is condemned.

14. *Enlisting the Services of Officials.*—It is unprofessional in any manner to use the name or solicit the services of any member of either House of Congress or of any other officer of the government as an aid to procuring business or prosecuting cases, and clients should be discouraged from seeking such aid.

15. *Ex-Officials of the Patent Office.*—It is unethical for any one, who has served in the Patent Office, to prosecute, directly or indirectly, applications having subject matter which to his knowledge will conflict with other unissued applications concerning which, during his employment in the office, he has obtained confidential information.

16. *Splitting Fees.*—When patent, trade-mark or copyright matters are referred to specialists in these fields by lawyers in general practice, there should be no division of the specialists' fees with the general practitioner

## C.

## COLORADO BAR ASSOCIATION CODE OF ETHICS.

The purity and efficiency of judicial administration which, under our system is largely government itself, depend as much upon the character, conduct and demeanor of attorneys in this great trust, as upon the fidelity and learning of courts, or the honesty and intelligence of juries.

"There is perhaps, no profession, after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and man-traps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as the moral courage, which belong commonly to riper years. High moral principle is his only safe guide; the only torch to light his way amidst darkness and obstruction."—SHARSWOOD.

No rule will determine an attorney's duty in the varying phases of every case. What is right and proper must, in the absence of statutory rules, and authoritative code, be ascertained in view of the peculiar facts, in the light of conscience, and the conduct of honorable and distinguished attorneys in similar cases, and by analogy to the duties enjoined by the statute, and the rules of good neighborhood.

The following general rules are adopted by the Colorado Bar Association for the guidance of its members:

## DUTY OF ATTORNEYS TO COURT AND JUDICIAL OFFICERS.

**1. Respect for Judicial Officers.**—The respect enjoined by law for courts and judicial officers is exacted for the sake of office, and not for the individual who administers it. Bad opinion of the incumbent, however, well founded, cannot excuse the withholding of the respect due the office, while administering its functions.

**2. Criticisms of Judicial Conduct.**—The proprieties of the judicial station, in a great measure, disable the judge from defending himself against strictures upon his official conduct. For this reason, and because such criticisms tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticism of judicial conduct, especially in reference to causes in which they have been of counsel, otherwise than in courts of review, or when the conduct of a judge is necessarily involved in determining his removal from or continuance in office.

**3. Using Personal Influence.**—Marked attention and unusual hospitality to a judge, when the relations of the parties are such that they would not otherwise be extended, subject both judge and attorneys to misconstruction, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same

time does not withhold the courtesy and respect due the judge's station, is the only just foundation for cordial personal and official relations between Bench and Bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4. *Defending the Courts.*—Courts and judicial officers, in their rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamor; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5. *Candor and Fairness.*—The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other. Knowingly citing as authority an overruled case, or treating a repealed statute as in existence; knowingly misquoting the language of a decision or text-book; knowingly misquoting the contents of a paper, the testimony of a witness, or the language or argument of opposite counsel; offering evidence which it is known the court must reject as illegal, to get it before the jury under guise of arguing its admissibility, and all kindred practices, are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening argument positions intended finally to be relied upon, in order that opposite counsel may not discuss them, is unprofessional. Courts and juries look with disfavor on such practices, and are quick to suspect the weakness of the cause which has need to resort to them.

In the argument of demurrers, admission of evidence, and other questions of law, counsel should carefully refrain from "side-bar" remarks and sparring discourse, to influence the jury or bystanders. Personal colloquies between counsel tend to delay, and promote unseemly wrangling, and ought to be discouraged.

6. *Punctuality in Attendance.*—Attorneys owe it to the courts and the public whose business the courts transact, as well as to their own clients, to be punctual in attendance on their causes; and whenever an attorney is late he should apologize or explain his absence.

7. *Displays of Temper.*—One side must always lose the cause, and it is not wise or respectful to the court for attorneys to display temper because of adverse ruling.

#### DUTY OF ATTORNEYS TO EACH OTHER, TO CLIENTS AND TO THE PUBLIC.

8. *Upholding the Dignity of the Profession.*—An attorney should strive, at all times, to uphold the honor, maintain the dignity and promote the usefulness of the profession; for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other, and the attorney thus discharges, not merely an obligation to his brothers, but a high duty to the state and his fellowmen.

9. *Disparaging the Profession.*—An attorney should not speak slightly or disparagingly of his profession, or pander in any way to unjust popular prejudices against it; and he should scrupulously refrain at all times, and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10. *Extent of an Attorney's Support of a Client's Cause.*—Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and in withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties, than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney "owes entire devotion to the interest of his client, warn zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. No sacrifice or peril, even to loss of life itself, can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within, and not without, the bounds of the law which creates it. The attorney's office does not destroy man's accountability to his Creator, or lessen the duty of obedience to law and the obligation to his neighbor, and it does not permit, much less demand, violation of law, or any manner of fraud or chicanery for the client's sake.

11. *Exposing Dishonest and Corrupt Attorneys.*—Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession, and there should never be an hesitancy in accepting employment against an attorney who has wronged his client.

12. *A Public Prosecutor's Duty.*—An attorney appearing or continuing as private counsel in the prosecution of a crime of which he believes the accused innocent, forswears himself. The state's attorney is criminal if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a *nolle pros.*, a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13. *Duty in Defense of Those Charged with Crime.*—An attorney cannot reject the defense of a person accused of a criminal offense because he knows or believes him guilty. It is his duty by all fair and honorable means to present such defense as the law of the land permits, to the end that no one may be deprived of life or liberty but by due process of law.

14. *Maintaining Harassing Litigation.*—An attorney must decline in a civil cause to conduct a prosecution when satisfied that the purpose is merely to harass or injure the opposite party or to work oppression and wrong.

15. *Private Communications with the Judge.*—It is a bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16. *Advertising.*—Newspaper advertisements, circulars and business cards tendering professional services to the general public are proper, but special solicitations of particular individuals to become clients ought to be avoided. Indirect advertisement for business, by furnishing or inspiring editorials or press notices, regarding causes in which the attorney takes part, the manner in which they were conducted, the importance of his positions, the magnitude of the interests involved, and all other like self-laudation, is of evil tendency and wholly unprofessional.

17. *Inspired Newspaper Comments.*—Newspaper publications by an attorney as to the merits of pending or anticipated litigation call forth discussion and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications, and when proper, it is unprofessional to make them anonymously.

18. *Attorney a Witness for Client.*—When an attorney is a witness for his client except as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the cause to other counsel. Except when essential to the ends of justice an attorney should scrupulously avoid testifying in court in behalf of his client, as to any matter.

19. *Expressions of Personal Belief.*—The same reasons which make it improper in general for an attorney to testify for his client apply with greater force to assertions, sometimes made by counsel in argument,

of personal belief of the client's innocence or the justice of his cause. If such assertions are habitually made they lose all force and subject the attorney to falsehoods, while the failure to make them in particular cases will often be esteemed a tacit admission of belief of the client's guilt, or the weakness of his cause.

20. *Stirring up Litigation*.—It is indecent to hunt up defects in titles and the like and inform thereof in order to be employed to bring suit, or to seek out a person supposed to have a cause of action and endeavor to get a fee to litigate about it. Except where ties of blood, relationship or trust make it an attorney's duty, it is unprofessional to volunteer advice to bring a lawsuit. Stirring up strife and litigation is forbidden by law and disreputable in morals.

21. *Confidential Communications*.—Communications and confidence between client and attorney are the property and secrets of the client, and cannot be divulged except at his instance, and even the death of the client does not absolve the attorney from his obligation of secrecy.

22. *Accepting Adverse Retainers*.—The duty not to divulge the secrets of clients extends further than mere silence by the attorney, and forbids accepting retainers or employment afterwards from others involving the client's interests, in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material in a subsequent suit, as the basis of any judgment which may injuriously affect his rights, the attorney cannot appear in such cause without the consent of his former client.

23. *Attacking His Own Instruments or Conveyances*.—An attorney can never attack an instrument or paper drawn by him for any infirmity apparent on its face, nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere conveyancer, and was not consulted as to the facts, and unknown to him the transaction amounted to a violation of the criminal laws, he may assail it on that ground, in suits between third persons or between parties to the instrument and strangers.

24. *Lobbying*.—An attorney openly, and in his true character, may render purely professional services before committees, regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principles of ethics which justify his appearance before the courts, but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action.

25. *Representing Conflicting Interests*.—An attorney can never represent conflicting interests in the same suit or transaction, except by express consent of all so concerned, with full knowledge of the facts. Even then, such a position is embarrassing, and ought to be avoided. An attorney represents conflicting interests, within the meaning of this rule, when it is his duty in behalf of one of his clients, to contend for that which duty to other clients in the transaction requires him to oppose.

26. *Villification and Abuse*.—It is not a desirable professional reputation to live and die with that of a rough tongue, which makes a man to be sought out and retained to gratify the malevolent feeling of a suitor, in hearing the other side well lashed and villified.

27. *Ministering to Prejudices of a Client*.—An attorney is under no obligation to minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the attorney's conscience in professional matters. He cannot demand as of right that his attorney shall abuse the opposite party, or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice and therefore justifiable.

*28. Ill Feeling and Personalities Between Attorneys.*—Clients and not their attorneys are the litigants; and whatever may be the ill feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

*29. "Trying" the Opposite Attorney.*—In the conduct of litigation and the trial of causes the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon, the personal history, or mental or physical peculiarities or idiosyncrasies of opposite counsel. Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

*30. Courtesies as to Time of Trial, Hearings, Etc.*—As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, where no harm will result from a trial at a different time; the time allowed for signing a bill of exceptions, cross interrogatories and the like; the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and propriety; and if such a course is insisted on the attorney should retire from the cause.

*31. Bold Assurances to Clients.*—The miscarriages to which justice is subject, and the uncertainty of predicting results, admonish attorneys to beware of bold and confident assurance to clients especially where the employment depends upon the assurance and the case is not plain.

*32. Promptness and Punctuality.*—Prompt preparation for trial, punctuality in answering letters and keeping engagements, are due from an attorney to his client, and do much to strengthen their confidence and friendship.

*33. Disclosing Adverse Influences.*—An attorney is in honor bound to disclose to the client, at the time of retainer, all the circumstances of his relations to the parties, or interest, or connection with the controversy, which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his obligations or relations to the opposite parties will hinder or seriously embarrass the full and fearless discharge of all his duties.

*34. Candid Statements—Avoiding Litigation.*—An attorney should endeavor to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it he ought to seek to adjust it without litigation, if practicable.

*35. Suppressing Evidence of His Own Agreements.*—Where an attorney, during the existence of the relation has lawfully made an agreement which binds his client, he cannot honorably refuse to give the opposite party evidence of the agreement, because of his subsequent discharge or instructions to that effect by his former client.

*36. Trust Property and Money.*—Money or other trust property coming into the possession of the attorney should be promptly reported, and never commingled with his private property or used by him, except with the client's knowledge and consent.

*37. Business Dealings with Clients.*—Attorneys should, as far as possible, avoid becoming either borrowers or creditors of their client; and they ought scrupulously to refrain from bargaining about the subject matter of the litigation, so long as the relation of attorney and client continues.

*38. Employment of Associates.*—Natural solicitude of clients often prompts them to offer assistance of additional counsel. This should not be met, as it sometimes is, as evidence of want of confidence; but after advising frankly with the client, it should be left to his determination.

**39. Agreements with Clients.**—Important agreements affecting the rights of clients should, as far as possible, be reduced to writing but it is dishonorable to avoid performance of an agreement fairly made, because not reduced to writing as required by rules of court.

**40. Taking Advantage of Opposing Counsel.**—An attorney should not ignore known customs or practice of the Bar in a particular court, even when the law permits, without giving opposing counsel timely notice.

**41. Compromising with Opposing Client.**—An attorney should not attempt to compromise with the opposite party, without notifying his attorney, if practicable.

**42. Disagreement Between Associate Counsel.**—When attorneys jointly associated in a cause cannot agree as to any matter vital to the interest of their client, the course to be pursued should be left to his determination. The client's decision should be cheerfully acquiesced in, unless the nature of the difference makes it impracticable for the attorney to cooperate heartily and effectively; in which event, it is his duty to ask to be discharged.

**43. Duty on Becoming an Associate.**—An attorney coming into a cause in which others are employed, should give notice as soon as practicable and ask for a conference; and if the association is objectionable to the attorney already in the cause, the other attorney should decline to take part, unless the first attorney is relieved.

**44. Discussions with Opposite Party.**—An attorney ought not to engage in discussion or arguments about the merits of the case with the opposite party, without notice to his attorney.

**45. An Agreed Compensation.**—Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding at the outset, as to the amount of the attorney's compensation; and, where it is possible, this should always be agreed on in advance.

**46. Suing for a Fee.**—In general, it is better to yield something to a client's dissatisfaction at the amount of the fee, though the sum be reasonable, than to engage in a lawsuit to justify it, which ought always to be avoided, except as a last resort to prevent imposition or fraud.

**47. Fixing the Amount of the Fee.**—Men, as a rule, overestimate rather than undervalue, the worth of their services, and attorneys in fixing their fees should avoid charges which unduly magnify the value of their advice and services, as well as those which practically belittle them. A client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in many instances, and sometimes none at all.

**48. Fees to Regular Clients—Contingent Fees.**—An attorney may charge a regular client, who entrusts him with all his business, less for a particular service that he would charge a casual client for like services. The element of uncertainty of compensation where a contingent fee is agreed on justifies higher charges than where compensation is assured.

**49. Elements to be Considered in Fixing a Fee.**—In fixing fees, the following elements should be considered: First, the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to properly conduct the cause; second, whether the particular case will debar the attorney's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that the attorney would otherwise be employed; and herein of the loss of other business while employed in the particular case, and the antagonism with other clients growing out of the employment; third, the customary charges of the Bar for similar services; fourth, the real amount involved and the benefit resulting from the service; fifth, whether the compensation was contingent or assured; sixth, is the client a regular one, retaining the attorney in all his business. No one of these considerations is in itself controlling. They are mere guides in

ascertaining what the service was really worth; and in fixing the amount it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

50. *Contingent Fees.*—Contingent fees may be contracted for; but they lead to many abuses, and certain compensation is to be preferred.

51. *Compensation for Services to Other Attorneys.*—Casual and slight services should be rendered without charge by one attorney to another in his personal cause; but when the service goes beyond this an attorney may be charged as other clients. Ordinarily advice and services to the family of a deceased attorney should be rendered without charge in most instances; and where the circumstances make it proper to charge, the fees should generally be less than in case of other clients.

52. *Treatment of Witnesses.*—Witnesses and suitors should be treated with fairness and kindness. When essential to the ends of justice to arraign their conduct or testimony, it should be done without vilification or unnecessary harshness. Fierceness of manner and uncivil behavior can add nothing to the truthful dissection of a false witness' testimony, and often rob deserved strictures of proper weight.

53. *Demeanor Towards the Jury.*—It is the duty of the court and its officers to provide for the comfort of the jurors. Displaying special concern for their comfort, and volunteering to ask favors for them, while they are present—such as frequent motions to adjourn trials, or to take a recess, solely on the ground of the jury's fatigue, or hunger, the uncomforableness of their seats or the court room, and the like—should be avoided. Such intervention of attorneys, when proper, ought to be had privately with the court; whereby there will be no appearance of fawning upon the jury, nor ground for ill feeling of the jury towards court or opposite counsel, if such requests are denied. For like reasons, one attorney should never ask another, in the presence of the jury, to consent to its discharge or dispersion; and when such a request is made by the court, the attorneys, without indicating their preference, should ask to be heard after the jury withdraws.

54. *Conversing with Jurors.*—An attorney ought never to converse privately with jurors about the case; and must avoid all unnecessary communication, even as to matters foreign to the cause, both before and during the trial. Any other course no matter how blameless the attorney's motive, gives color for imputing evil designs, and often leads to scandal in the administration of justice.

55. *Appearing for the Defenseless and Oppressed.*—An attorney assigned as counsel for an indigent prisoner ought not to ask to be excused for any light cause, and should always be a friend to the defenseless and oppressed.

## D.

### STATE BAR ASSOCIATION OF CONNECTICUT DECLARATION CONCERNING PROFESSIONAL ETHICS.

#### PREAMBLE.

The administration of justice demands as essential requisites a court composed of judges of probity, learning and ability and a Bar consisting of lawyers, *i. e.*, attorneys and advocates qualified to assist the court in ascertaining the truth and to represent

the litigant in asserting his rights. As an officer of the court seeking to ascertain truth, establish justice, and defeat falsehood, and as the representative of the litigant entitled to his just rights, the lawyer cannot perform the duties he undertakes unless he acts in strict obedience to the laws of truth and fidelity. Disregard of these laws necessarily incapacitates the lawyer for the office he holds. Two centuries ago Connecticut first regulated admission to its Bar and then adopted by a law which has ever since remained in force a form of oath promising obedience to the laws of truth and fidelity, the observance of which by every lawyer is the condition of his continuance in office. This oath declares that, in the performance of his work as a lawyer, whatever savors of doing, aiding or concealing falsehood, or promoting a false suit, or delaying a just suit for lucre or malice is wrong, and whatever savors of treachery to the court or to the client is wrong; and in taking this oath the lawyer accepts obedience to these fundamental ethical maxims as the essential condition of his continuance in office.

In recognition of the true province of the Bar as a necessary element in the administration of justice, of the strict observance of the obligations of truth and fidelity in the professional conduct of the lawyer as an essential condition to the existence of the Bar, and in the hope of assisting the great mass of its members who are desirous of acting in accord with the highest standard of their profession, as well as of facilitating the elimination of the few who may be hopelessly unfit, the State Bar Association of Connecticut adopts this:

#### DECLARATION.

##### THE LAWYER IN COURT.

**1. Absolute Truth to Characterize Statement and Conduct.**—Statements of the lawyer to the court and to other lawyers in relation to the business of the court must be characterized by absolute truth.

To mis-state directly or indirectly a fact upon which the court is asked to base its action or which the court is entitled to know or upon which other lawyers are asked to rely or entitled to rely;

To pervert the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes;

To offer evidence he knows the court should reject in order to get the same before the jury by argument for its admissibility;

To misquote knowingly or negligently the contents of a paper, the testimony of a witness, the language or argument of opposing counsel, the language of a decision or text-book, or to cite as authority a decision

that has been overruled or a statute that has been repealed, or in an argument to assert a fact that has not been proved, or to mislead an opponent by any form of trickery;

These and all kindred practices in violation of the Canon of truth are unprofessional, that is, they are inconsistent with membership in a profession of which each member is charged as an officer of the law with the duty of aiding in the administration of justice.

*2. Attempts to Exert Influence through Improper Means.*—Attempts to influence verdicts or judgments through the use of considerations which the law forbids is a species of doing falsehood and a violation of the Canon of truth;

Attempts to exert personal influence upon the court or jury through improper suggestions upon the trial or private conversations with the judge;

Attempts to mislead the jury through any device for suggesting to them facts they have no right to consider, or subjecting them to improper influences;

Attempts to prejudice court or jury through newspaper publications as to pending or anticipated litigation, and other like practices are unprofessional;

*3. Fidelity.* The great trust of the lawyer must be performed within and not without the bounds of the law with fidelity to the court as well as to his client. The lawyer's duty to the court and to his client are not distinct duties but complimentary, constituting the fundamental duty of fidelity to the lawyer's trust.

*To the Client.*—Fidelity to the court as well as to his client demands of the lawyer "entire devotion to the interest of his client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability," to the end that nothing be taken or withheld from him save by the rules of law legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense subject to the limitations herein expressed.

*To the Court.*—Fidelity to the client as well as to the court demands that a lawyer in thus conducting his client's cause shall commit no violating of law, nor any manner of fraud or chicane, nor pervert the opportunities of a trial intended only for the protection of a client's interest to the mere gratification of his malevolence.

*4. Lawyer, Not Client, Responsible for Conduct of Trial.*—A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

*5. Defense of Persons Accused of Crime.*—It is the right of a lawyer to undertake the defense of a person accused of crime regardless of his personal opinion as to the guilt of the accuse, otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense the lawyer is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no persons may be deprived of life and liberty but by due process of law.

The primary duty of a lawyer exercising the office of public prosecutor is not to convict but to see that justice is done.

## THE LAWYER IN HIS OFFICE.

*1. Right to Determine Class of Business.*—No lawyer is obliged to act either as advisor or advocate for every person who may wish to become his client. He has the right to decline employment. The class of business he will undertake, the persons for whom he will act may properly be determined in accordance with his own tastes and judgment.

*2. Duty as to Clients Seeking Advice for Accomplishment of Questionable Transactions.*—Those who seek to violate the law with impunity or to accomplish oppression or fraud through the evasion of the law cannot apply to the officers of the law for advice and assistance. The lawyer must refuse to aid such persons and must decline to conduct civil cause or make a defense when convinced that it is intended merely to harass or injure the opposite party or to work oppression or wrong. The responsibility for advocating questionable transactions, for bringing questionable suits, for urging questionable defenses, or for seeking extortionate settlements through abuse of legal process is the lawyer's responsibility; he cannot escape it by urging as an excuse that he is only following his client's instructions.

His conduct in any professional employment should be deemed an assertion that in his opinion, the course pursued is justifiable under the law, and consistent with his professional obligation, and his appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

*3. Caution and Frankness in Giving Advice.*—A lawyer should endeavor to obtain full knowledge of this client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of courts, even though only occasional, admonish lawyer to beware of bold and confident assurance of success to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

*4. Disclosure to Client of Lawyer's Relation to Controversy and Parties.*—It is the duty of the lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties and any interest in, or connection with, the controversy which might interest the client in the selection of counsel.

*Seal of Professional Confidence.*—He should not consent to represent the interests of a client in whose behalf it would be his duty to contend for that which his duty to another client requires him to oppose unless by express consent of all concerned given after a full disclosure of the facts. The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employments from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed. Under no circumstances should a lawyer disclose any private information professionally acquired without the consent of the client who imparted it.

*5. Duty de Barratry.*—Stirring up strife and litigation is not only unprofessional but it is indictable at common law. A duty to the public and to the profession devolves upon every member of the Bar having knowledge of disreputable practices of any practitioner in hunting up causes or grounds of action and informing thereof in order to be employed to bring suit, immediately to disclose such knowledge to the end that the offender may be punished.

*6. Examining Witnesses in Preparation for Trial.*—A thorough examination of witnesses in preparation for the trial of a cause is an important

and one of the most delicate duties of a trial lawyer. By its honest performance the real strength of his client's cause is disclosed and its fair presentation to the court promoted. The possibility that this necessary testing of the truth and accuracy of witnesses for the honest and effective presentation of the real facts may be perverted to a training school for perjury demands of the lawyer the utmost caution and firmness in conducting such examinations; remembering that fidelity to his client as well as to the court requires him to satisfy himself as far as practicable of the good faith and probable truth of the statements of the persons he may decide to produce as witnesses.

7. *Client's Money and Trust Funds.*—Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, should not be detained in his hands without the express consent of the client, and should not be commingled with his private property or be used by him. No unauthorized use or detention of the client's property or money is permissible.

8. *Compensation for Legal Services.*—A just and adequate compensation for legal services is essential to the independence and efficiency of the Bar. Effective provision for the administration of justice is properly one of the heaviest charges of government and the use of such provision is necessary costly to litigants. The cost of litigation is a necessary check to the evil of litigiousness. In fixing fees lawyers should avoid charges which overestimate their advice and services as well as those which undervalue them. While the amount of compensation is ordinarily within the reasonable discretion of the lawyer making the charge, yet the close fiduciary relation between himself and his client calls for the keenest sense of honor and firm restraint of self-interest in the exercise of this discretion.

The client is entitled to a full understanding as to the basis on which the expected compensation will be computed, and the imposition on the client of unforeseen or unexpected charges is inconsistent with the mutual confidence which underlies professional employment, and is utterly indefensible as against indigent or ignorant persons, or those imperfectly acquainted with our language.

The reasonable requests of brother lawyers and of their widows and orphans without ample means should receive special and kindly consideration.

It is the duty of the Bar in appropriate instances to protect the indigent and helpless from oppression, and each lawyer should share, as occasion requires, in the performance of this duty. In such case he may properly charge a reasonable fee in the event of a successful issue, but the poverty of a client may never justify a lawyer in purchasing an interest in the subject-matter of the litigation or in stipulating for an extortionate fee on the basis of a wagering percentage of its profits.

In fixing the fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

#### PROFESSIONAL ETIQUETTE.

Rules of etiquette have their origin in moral duties. The traditional proprieties necessary to be observed by the lawyer in his official intercourse with the court, the client, and with other lawyers as approved by past and present experience include the following requirements and tests of conduct:

1. *Attitude to the Court.*—A respectful attitude and a courteous firmness in urging his client's and his own just claims. A self-respecting in-

dependence in the discharge of professional duty without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

2. *Relation to Brother Lawyers.*—To maintain in its essential spirit the relation of lawyers as brethren at the Bar. To refrain from any effort, direct or indirect, to encroach upon the business of another lawyer. When required to give proper advice to those seeking relief against unfaithful or neglectful counsel, to act without fear or favor, though generally after the communication with the lawyer against whom the complaint is made.

3. *Employment of Additional Counsel.*—A client's proffer of assistance of additional counsel should not be regarded as evidence of lack of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved another may come into the case.

4. *Differences between Associate Counsel.*—When lawyers associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

5. *Negotiations de Subjects of Controversy Confined to Counsel.*—A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel and he should not undertake to advise him as to the law.

6. *Disputes with Clients de Compensation.*—Controversies with clients concerning compensation should be avoided so far as shall be compatible with self-respect and with his right to receive reasonable compensation for his services, and lawsuits with clients should be resorted to only to prevent injustice imposition, or fraud.

7. *Personalities between Opposing Counsel.*—Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

8. *Lawyer as a Witness.*—When a lawyer is a witness for his client except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client.

9. The conduct of the lawyer before the court and with other lawyers should always be characterized by candor and fairness.

10. *Lawyer's Control as to Incidents of the Trial.*—As to incidental matters pending the trial not affecting the merits of the cause nor working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an

extension of time for filing a document or the like, the lawyer must be allowed to judge. In such matters he should act with due consideration for his opponent, and no client has a right to demand that his counsel shall be illiberal or that he do anything therein repugnant to his own sense of honor and propriety.

11. *Observance of Practice and Rules of Court.*—A lawyer should not ignore known customs or practices of the Bar, even when the law permits, without giving timely notice to the opposing counsel. The habit of ignoring rules of court in reliance upon the good nature of opposing counsel is indefensible, necessarily tends to misunderstanding, and should be repressed. As far as possible important agreements affecting the rights of clients should be reduced to writing; but performance of an agreement fairly made cannot be honorably avoided because it is not reduced to writing as required by rules of court.

12. *Unseemly Commercial Methods.*—The most worthy and effective advertisement possible for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. The publication or circulation of ordinary business cards being a matter of personal taste and sometimes of convenience is not *per se* improper. But solicitation of business through communications to newspapers or agents, and devices for direct and indirect self-laudation are inadmissible and intolerable.

#### THE GRIEVANCE COMMITTEE.

The law provides for a committee of the Bar in each county charged with the duty of taking the advice and invoking the action of the court in respect to professional misconduct. The law confers upon this committee powers necessary and appropriate to the investigation of all offenses not occurring in the actual presence of the court involving the character, integrity, professional standing and conduct of members of the Bar.

Each lawyer is entitled to the presumption of right conduct which distinguishes the Bar as a whole. Captious criticism of each other is intolerable. Nice questions of casuistry, unless as an aid to personal self-searchings, are unprofitable. But the Grievance Committee is the natural complement of professional spirit in maintaining the standard of efficiency of the Bar. The assurance of a liberal and just judgment of all honest efforts to follow the recognized rules of right conduct is a healthful stimulant to all; and the certainty of prompt punishment of patent falsehood and breach of faith, knowing production of false evidence, unauthorized use of a client's money or of trust funds, and like offenses which should automatically work disbarment, secures the sure elimination from the Bar of hopelessly unfit members.

## THE LAWYER'S RELATION TO THE PUBLIC.

Lawyers are not only officers of the court employed in the administration of the judicial department, but they are also by the very nature of their duties charged with a peculiar responsibility to the public as citizens.

*1. Support Due to Judges.*—The duty of every citizen to promote a conviction of the supreme importance of the judicial office, and a feeling of just confidence in its administration, is the special duty of the lawyer. Judges not being wholly free to defend themselves are particularly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer it is the right and duty of the lawyer to submit the grievance to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

*2. Duty as to Selection of Judges.*—The public has a right to expect that the influence of the Bar will be directed toward securing a Bench composed only of men of learning, courage, ability and judicial temper. It is the duty of the Bar to endeavor to prevent political consideration from outweighing judicial fitness in the selection of judges and to protest earnestly and actively against the appointment of those who are unsuitable for the Bench. The aspiration of lawyers for judicial position should be governed by an impartial estimate for their ability to add honor to the office, and not by a desire for the distinction the position may bring to themselves.

*3. Representation of Clients before Legislative and Non-Judicial Bodies.*—A lawyer may not for the sake of gain neglect his supreme duty as a citizen to promote wise and just legislation in all matters touching the rights and liberties of the people. Consistently with this duty a lawyer openly and in his true character may render professional services before legislative or other bodies regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles which justify his appearance before the courts and which forbid any concealment of his attorneyship, the employment of secret personal solicitations, or the use of any means to influence action other than those addressed to the reason and understanding.

*4. Exposure of Professional Misconduct.*—The lawyer should expose, without fear or favor, before the proper tribunals, corrupt or dishonest conduct in the profession, should accept, without hesitation, employment against a member of the Bar who has wronged his client, should aid in guarding the Bar against admission of candidates unfit or unqualified because deficient in either moral character or education, and should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

*5. Responsibility to the Public for a Loyal and Honest Exercise of His Profession.*—No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law in those who are its ministers or disrespect to the judicial office, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly he advances the honor of his profession and the best interests of his client when he renders services or

gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe, and advise his client to observe the statute law, though until such a statute shall have been construed and interpreted by competent adjudication he is free, and is entitled, to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

## E.

### THE CODE OF LEGAL ETHICS OF THE BAR ASSOCIATION OF SAN FRANCISCO.

(The Bar Association of San Francisco unanimously adopted the following code of ethics at a meeting held Oct. 13, 1910. The code is framed upon an entirely different plan from that of The American Bar Association Code, laying particular stress on the duty of the lawyer to devote every effort to remedying present defects in the administration of justice. The committee which reported the code consisted of Charles S. Wheeler (chairman), Warren Olney, Grover O'Connor, Charles A. Shurtleff and A. C. Freeman.—Ed.)

*1. Distinctive Character of American Legal Ethics.*—The Bar Association of San Francisco calls upon all licensed practitioners at the San Francisco Bar to bear in mind that the profession of the law, for more than 2000 years, has been recognized as essential to the social concept which is the basis of American civilization; that the ideals of the profession call not only for ability, learning, humanity and probity, but for a high-minded and unselfish obedience to the ethical truth that the lawyer, as an officer of the court, is obligated to aid in, and not to hamper or thwart, the administration of justice.

They are also called upon to remember that their profession is incorporated into, and dignified by, the organic acts of the state and the nation; that the Bar is charged with the high duty of supplying from its limited ranks the Judicial Department of government, the supreme importance of which department is emphasized in the circumstance that the people have delegated to it the power to adjudge null and void the acts of the two remaining departments.

The Bar is admonished that an incompetent, cowardly or dishonest judiciary would, if persisted in, lead to the overthrow of American institutions; and that a competent, courageous and honest judiciary cannot be looked for if the Bar itself is in-

competent, cowardly, dishonest or careless of the obligations resting upon it as a collective body.

The profession should also bear in mind that the lawyer, in addition to his distinct functions in reference to the judicial branch of the government, has always been given much prominence in the legislative and executive departments; that in the legislative department members of his profession have usually, if not invariably, outnumbered the legislators elected from any other single walk in life, while the chief executives of the state and the nation have, in most instances, been members of the Bar.

The foregoing considerations, to which many of a kindred nature might be added, emphasize the vital nature of the relation of the Bar to American institutions, and point to the supreme truth that American patriotism is the keystone of American Legal Ethics.

*2. Lawyers' Obligations to the Professional Body.*—To the end that the duties which rest upon the Bar as a professional body may be performed, each lawyer is in honor obligated to devote to the common cause a fair proportion of his time and labor.

*3. Organized Effort Essential.*—Since it is obvious that the work of the Bar cannot be effectually accomplished without organized effort, it follows that a local bar association should embrace in its membership each and every reputable member of the Bar. The refusal of a member of the Bar so to identify himself with the body of his profession at his earliest opportunity is a flagrant disregard of professional duty.

Each member of the Bar is morally bound to perform fairly and thoroughly the work assigned to him by the organized Bar.

Duties of an inquisitorial or disciplinary character demand not only fairness and impartiality, but the highest degree of moral courage, unselfishness and backbone. Boards and committees called upon to discharge such duties are, in an important sense, the custodians of the reputation and dignity of the Bar. Shirking of duty on such committees is reprehensible and unprofessional in a high degree.

*4. Duty to Maintain High Standard in Personnel of Bench and Bar.*—It is the duty of the united Bar to exert its influence and efforts to the end that those only who are honest, intelligent

and adequately prepared shall be admitted to the Bar; that those only who maintain their integrity of character shall be permitted to remain there; that those only who are in every way fitted shall be elevated to the Bench and that those only whose honesty, industry, affiliations, associations and habits continue to maintain the people's faith in and respect for the law shall be permitted to remain on the Bench.

*5. Non-Partisanship in Regard to the Bench.*—It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench. The united Bar should likewise strive for retention in office of competent judges, irrespective of their party affiliations, and should exert its influence for the removal of the judiciary from the domain of partisan politics.

*6. Attitude of the Bar Toward the Bench.*—The lawyer must bear in mind that his duty to maintain toward the courts a respectful attitude does not spring from his personal regard for the incumbent of the judicial office, but from the fact that it is of supreme importance that the dignity of the office shall be maintained. Bad opinion of the incumbent, however well-founded, cannot excuse a failure to exhibit the respect due to the judicial office.

Judges are entitled to receive the support of the Bar as a professional body against unjust criticism and clamor.

Where there is a proper ground for serious complaint against a judicial officer, it is the right and duty of the lawyer to submit his grievance to the proper authorities. In such cases, but not otherwise, such charges should be encouraged, and the person making them should be upheld and protected by his professional brethren.

Lawyers are admonished to bear in mind that one side or the other must prevail in each of the several stages of a court proceeding, and that it is highly unprofessional to display temper either in court or out because of an adverse ruling or decision.

It is reprehensible and highly unprofessional for a lawyer to communicate or argue privately with a judge as to the merits of a pending cause, and he deserves rebuke and denunciation for

any device or attempt to gain from a judge special consideration or personal privilege or favor.

7. *Relations of Bench and Bar.*—Mutual respect, induced by high-minded independence in the discharge of judicial and professional duty, is a proper foundation for cordial personal and official relations between Bench and Bar.

A judge's personal and political friends who practise before him, owe it to him, to the Bar and to the public to be scrupulously careful to avoid any appearance, act or conduct susceptible of misconstruction.

8. *Profession Responsible for the Progress and Adequacy of the Law.*—Law is a progressive science, and it is the duty of the Bar to do its utmost to keep it abreast of the needs of the times. To that end the Bar should exert itself to bring about the abolition of any rules of law or practice, however firmly grounded in precedent, that may appear to have become unsuited to present conditions. Particularly should the Bar strive for the abolition of any statutory or judicial doctrine not consonant with justice and equity.

9. *Profession Responsible for the Law's Delays.*—The Bar admits its full responsibility for such of the law's delays as are not inherently necessary under our system of government. This Bar recognizes that it is an immediate and continuing duty on the part of the profession, on the Bench and at the Bar, to remedy the present tardy methods of conducting legal controversies. To that end the members of the Bar are admonished that code provisions and rules of court regulating pleadings, practice and procedure are intended to facilitate and speed the administration of justice. Those in existence are recognized by the Bar as adaptable to that purpose if their spirit is insisted upon and obeyed by both Bench and Bar.

To the same end, the Association declares it to be not professional for a lawyer to take advantage of any imperfections in the machinery of the law, with the intent thereby to retard, delay or restrict the speedy trial and conclusion of civil and criminal actions and proceedings, or the hearing of any demurrer, motion or matter therein requiring a hearing.

It is not professional to interpose demurrers for the purpose of securing delay, nor to carp at trivial defects in a pleading not

going to the merits ; nor to move to strike out parts of a pleading where no useful purpose will be subserved thereby ; nor to obtain by stipulation or by order more time to plead than is reasonably and fairly necessary ; nor to neglect to demand a jury trial until on or near the day of trial ; nor even to demand a jury trial where the purpose of the demand is to delay the cause ; nor to move or request a court to grant a continuance of a cause on statutory grounds without making a strictly legal showing, or upon any other grounds without making or causing to be made to the court and opposing counsel a full, truthful and unexaggerated statement of the reason therefor ; nor to refrain from notifying the court and opposing counsel, as far in advance of the time set for trial as the circumstances of the case will admit, of an intent to move for a continuance ; nor to move for a change of venue or to make any other motion in an action or proceeding, merely to vex, harass or annoy the opposite party, or to put him to needless expense ; nor to make use of the delays necessary or possible in the law for the purpose of wearing out an antagonist or forcing him to a compromise.

It is the duty of the Bench and Bar to be punctual in attendance upon court.

It is the lawyer's duty, in the trial of causes, to expedite the work of the court by admitting the truth of all matters which he knows to be true, and not to consume its time by requiring proof, in the hope of discovering and obtaining advantage from technical defects in an opponent's preparation or procedure.

The lawyer is ethically obligated, not only to his clients, but also to the Bar, to take upon himself no more business than he can properly and speedily dispatch. While reasonable courtesies in the matter of continuances are essential in the experience of every lawyer, it is unethical to expect, or to seek to obtain, postponements or delays in the trial of causes which are either unreasonable in number or duration, or which are not absolutely necessary.

*10. Responsibility of the Bar Relative to the Jury System.—* The Bar must hold its own apathy largely responsible for the disrespect into which the jury system has fallen. In all cases a lawyer is responsible to his professional brethren for his own conduct and the conduct of his employees in relation to the jury.

Existing conditions demand that he also be held *prima facie* responsible for any misconduct in the same regard by his client or his client's employees. To that end it is declared that henceforth the lawyer representing the side employing improper means with a jury is presumed to be the responsible source of such scandal, and where such improper conduct is shown to have been employed, it is essential to the professional standing of the lawyer representing the side involved that he exonerate himself before the organized Bar from complicity in it or connivance at it.

All attempts to curry favor with juries by fawning, flattery, or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing.

A lawyer must never converse privately with jurors or prospective jurors, and both before and during the trial he should avoid communicating with them even as to matters foreign to the cause.

It is not professional for a lawyer to offer evidence which he knows the court should reject in order, under the guise of arguing its admissibility, to get the same before the jury, nor should a lawyer address to the judge arguments or statements known to be foreign to the issue.

It is particularly reprehensible to introduce into an argument addressed to the court remarks or statements intended to influence the jury or prospective jurors in the cause.

It is disreputable and unprofessional to make, in an opening statement to the jury, or in an offer to prove, assertions which a lawyer knows he cannot or will not be permitted to prove.

A too narrow application of existing rules operates to relieve a large part of the most intelligent portion of the community from jury duty. The obligation rests upon the Bar to strive for greater liberality in these rules to the end that juries may possess the intelligence essential to true fair-mindedness.

The members of the Bar who make up the judiciary are respectfully admonished that it is the consensus of opinion of this Association that the latitude often permitted counsel conducting jury trials, particularly in criminal cases, tends to con-

fuse the issue, to improperly bias the jury and to defeat the ends of justice; and it is the intent of this code respectfully to remind the Bench that it is the duty of the courts, in their ethical relations to the Bar, to hold all counsel strictly and impartially to the issues involved, in criminal and civil jury trials, and to enforce their orders and admonitions given to that end with all of the powers at their command.

*11. The Conduct of Criminal Cases.*—This Association takes notice of the opinion expressed by the Chief Executive of the nation—himself a distinguished lawyer and judge—that the administration of the criminal law is a disgrace to our institutions. It further recognizes that the remedy lies to a large extent in the domain of legal ethics. It therefore lays down the following Canons which should be obvious but which it believes have been generally disregarded in the trial of criminal causes:

The lawyer's right and obligation to defend persons charged with crime carries with it no duty and no right to prostitute either the letter or the spirit of the law.

The lawyer's primary obligation, as an officer of the court, to assist in the administration of justice, is neither abrogated nor diminished by his appointment or retainer to defend a person charged with crime.

A lawyer who invents or manufacturers defenses for prisoners, or who procures their acquittal by the practice of any manner of deceit, cajolery, willful distortion or misrepresentation of facts, or any other means not within the spirit as well as the letter of the law, is to be reckoned as an enemy to society more dangerous than the criminal himself; while successes at the Bar won by such methods can never be the basis of desirable professional reputations, but, on the contrary, are badges of infamy.

Whenever an attorney's professional obligation compels him to bring about the acquittal of a person charged with crime through the advancement of a legal proposition foreign to the guilt or innocence of the accused, his success is to be regarded both by him and by his professional brethren rather as the culmination of a regrettable duty than as a professional triumph.

Lawyers representing the people in public prosecutions should use every proper means to lay before the jury the cause of the people, and should strive to prevent miscarriages of justice

through the exercise by persons accused of crime, or those acting in their behalf, of any improper or corrupt means.

In the criminal law it must be remembered that the people rightfully demand, and are entitled to, not only the conviction of the guilty, but the acquittal of the innocent as well.

To the extent of a full recognition of the foregoing principles, the feelings of the attorney charged with the prosecution or with the defense may properly enter into his client's cause, but beyond this he should avoid bringing his personality or his personal feelings or beliefs into a criminal cause.

12. *Paramount Ethical Obligation*.—As a final and emphatic Canon in this, its Code of Ethics, the Bar Association of San Francisco admonishes the profession that its members are officers of the court charged with the high duty of aiding in the administration of justice, and that this duty enters into and must be recognized as the dominant factor in the interpretation of any obligation resting upon the lawyer to further the interests of his clients or to maintain successfully their causes.



IV.

LIST OF SUBJECTS UPON WHICH CHAIRMAN OF THE  
COMMITTEE ON PROFESSIONAL ETHICS OF THE  
NEW YORK COUNTY LAWYERS' ASSOCIATION HAS  
BEEN CONSULTED WITHOUT SUBMISSION TO THE  
COMMITTEE.

[Reported in the Year Books of the Association.]



## IV.

### EXTRACTS FROM REPORTS OF COMMITTEE ON PROFESSIONAL ETHICS OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION.

INDICATING SUBJECTS UPON WHICH INQUIRERS HAVE CONSULTED THE CHAIRMAN, WITHOUT REQUIRING SUBMISSION TO THE COMMITTEE.

[Year Book, 1915, pp. 146-150.]

These informal inquiries have included questions of the propriety of a lawyer's conduct or his professional duty in such cases as the following:

The prosecution of suits and entry of judgments without authority.

The payment of a judgment to an attorney after two years and after his client has disappeared.

The acceptance of a retainer from a defendant, while prosecuting another suit against him in behalf of another client.

An attorney, acting as solicitor of life insurance, and advising or soliciting a client to take a policy.

The duty of a lawyer, who has brought suit for an infant client and recovered judgment without the appointment of a guardian *ad litem*.

Whether the editor of a reputable journal may lawfully run a column for free legal advice in answer to questions.

The propriety of a judge sitting in a case where a referee appointed by him in another case is acting as counsel.

Where an attorney has sued two members of a partnership for his fee, and one of them pays him half his claim, but only on condition that he pursue the other for the whole of it.

The presentation of a will for probate in this state, while the client is under indictment in another state for forging it.

The right to withhold money collected for a client in order to pay fees and disbursements incurred for him in another cause.

The urgent solicitation of representation of creditors in bankruptcy by counsel for the trustee.

The use of supplementary proceedings to coerce a judgment debtor to secure employment for the creditor's attorney, and in such employment learning facts subsequently utilized by the attorney to press the supplementary proceedings to a successful issue.

A law student soliciting claims for collection and turning them over to an attorney for enforcement.

Participation by an attorney in a loan to a corporation at 60 per cent interest and a bonus to the attorney.

Cancelling a notice of *lis pendens* in an action because the client terminates the employment, pays the lawyer and gets his consent to substitution of another attorney.

A law student placing his name on a lawyer's door.

Attorney advertising to secure reduction of tax assessments for a fraction of the tax saved.

Attorney for a destitute wife soliciting her husband to pay the expenses of an annulment suit.

Title company advertising that its attorneys will draw wills for its customers.

Attorney for junior attaching creditor appearing for the debtor to vacate prior attachment under agreement that if he is successful the debtor will not contest the junior attachment.

Notary Public taking acknowledgment by telephone, where he knows both voice and signature and where he knows neither, but both are identified to his satisfaction.

Anonymous advertisements by attorneys.

A 30 per cent contingent fee in an uncontested probate matter.

Attorney for decedent hunting for next of kin and apprising them of their property rights in expectation of employment by them.

Attorney appearing in testamentary proceeding for both executor or administrator and next of kin, where there is no conflict of interest.

Whether criminality of husband, unknown to wife, is ground for annulment of marriage.

Attorney announcing by circular his opening of an office and enumerating at length his prior employment in various official capacities or public projects.

Candidate for judicial office distributing his portrait for campaign purposes.

The interposition for a client of a defense against the enforcement of his undenied written promise.

Attorney accepting for collection a promissory note and then accepting from the maker a retainer to defend against it, when suit is brought upon it through another attorney.

Transferring a note for suit in order to avoid the interposition of a counterclaim.

Entering judgment for full amount of claim and costs, in order to obtain the costs, and issuing execution therefor, where the debtor has paid the claim in full before judgment, but declines to pay the costs.

The continuation of a firm name by one partner where the other removes to a distant city within the state and continues practice there in his own individual name.

The basis upon which employment can be accepted by an attorney from a collection agency which solicits claims.

Clerk in a law office, not admitted to the bar, conducting supplementary proceedings and examining the debtor therein.

Attorney suffering judgment by default through failure to notify his clients of the date of trial, though the validity of the defense may be doubtful.

Attorney drawing a will for a testator, pronounced by an alienist to be incompetent, inserting his own name as executor, and subsequently entering into a contingent contract with a legatee to sustain its validity.

Attorney inserting his own name in will at testator's request as testator's nominee for executor's legal adviser.

Charging excessive fees to client whose necessities compel submission.

Rights of lawyer borrower, who seeks to secure renewal of mortgage from lender, but finds that lender's attorney for his own selfish purposes declines to assent to the renewal in behalf of his client unless himself bounteously compensated; whether under such circumstances he can properly deal direct with the client and disclose his attorney's conduct.

Attorney disclosing to client of another lawyer the selfish improprieties of the latter, which render it impossible to secure a just disposition of a pending controversy.

Attorney appearing for joint defendants, whose interests, not being identical, may become conflicting in the course of the litigation.

Attorney for plaintiff in suit against joint defendants, which results in judgment against one only, subsequently accepting retainer from the successful defendant to prosecute action against the other defendant arising out of same transaction.

Accepting a retainer from the opposite party to a transaction, after the client has rejected his counsel's advice and has sought and retained other counsel therein.

After procuring interlocutory, but not final decree of divorce for wife, accepting employment from husband to defend suit brought by third person against husband for wife's alleged necessities.

Oppressive and discourteous judicial treatment of plaintiff, by abuse from bench for bringing suit and for testifying therein, followed by judicial selection from bystanding attorneys to enforce judgment for costs imposed in favor of defendant.

Inclusion of items of carfare, telephone and stenographer's charges in a lawyer's disbursement bill to his client (who considered that they should be covered by his fee), though he had contracted with his client for the repayment of his disbursements in addition to his stipulated fee.

Acceptance by attorney of retainer to conduct proceedings before transfer tax appraiser, without formal substitution in place of former attorney, who procured probate of will, and order for transfer tax proceedings, and who has not been paid nor discharged by his client.

Oppressive exactions from third persons by attorneys in their own behalf, as condition of approving negotiations by their clients.

Attorney for accounting executor who discovers that his client has omitted from his account a very large advancement made by the testator in his lifetime to the accountant, the omission resulting in giving to the accountant an undue share of the estate, unknown to the other distributors.

[Year Book, 1916, pp. 133-137.]

Propriety of printed form of demand for payment of debt, in simulation of legal process.

Form of lawyer's card—containing an urgent suggestion to get good preliminary advice in every transaction.

Propriety of accepting professional employment from a client dissatisfied with his former attorney, but against a protest of the former attorney.

The acceptance of a retainer by lawyers from a collection agency and the division of the entire compensation for the collection between the lawyers and the agency upon an agreed basis.

The proper amount of a charge in a specific case of a dispute between attorney and client.

The acceptance of a retainer from a wife in a separation suit after introduction by the husband.

The course to be pursued by a lawyer of another state, becoming a resident of this state, in his relations with attorneys of this state, prior to the lapse of his six months of residence.

The acceptance of a retainer to foreclose a mortgage, where other clients of the inquirer will be necessary defendants.

Permitting an admitted law clerk of the inquirer to represent as attorney on the record parties whose interests are not really adverse to those of the inquirer's clients on the record, but who are necessarily on opposite sides of the record; and supervising the work of the law clerk for his nominal clients.

Advice to a client that if he changes his residence to another state he can there procure a divorce for a cause upon which it would be denied him in his present domicile; coupled with the further advice to continue in the foreign state only until he gets the desired decree; and also with the further advice to avoid bringing the pendency of the suit to the actual notice of the wife.

Rights and duties of lawyer where the interests of one client become inimical to those of another, and he is requested to accept a retainer for one in litigation against the other.

Acceptance of retainer for a wife in a divorce action instituted by her husband, after the discontinuance of an action for separa-

tion brought by her, in which the lawyer now solicited to accept her case was attorney for her husband.

Arranging with former employer of one who has stolen money from him, for the return of the money on condition that he will do all that he properly can to influence a District Attorney to dismiss an indictment against the employee.

Rights and duty of a lawyer expressly employed to appear temporarily in a suit, when his client refuses to consent to his withdrawal as attorney of record.

Method of disciplining an attorney in a foreign state for unprofessional conduct.

Publication (for a consideration) of biographical sketches of lawyers in connection with law lists in which their names appear.

Acceptance of prosecution of civil suit against a client while prosecuting his suit in an unrelated matter.

Acceptance of independent employment in behalf of a husband as administrator to collect a debt, after having appeared for his wife and procured a decree of divorce against him.

Acceptance of contemporaneous employment (in such case) from the wife to subject the husband's interest in the estate to the payment of alimony awarded in the divorce decree.

Right or duty of disclosure to the wife (in such case) of the fact of employment by the husband and the existence of assets in which he has a personal interest.

Employment by lawyers of an investigator to be paid a stipulated salary, but only out of the proceeds of professional employment procured by him for his employers.

Form of letter to be sent to judgment debtor threatening him with proceedings to enforce it, if he does not comply with promises of payment made by him.

Rights and duties of lawyer who in course of professional confidences learns matter of international import seriously concerning his own government; but whose disclosure is not consented to by his client.

Right of a lawyer to accept retainer to enforce legal rights of a client against another, after the client has falsely testified denying the existence of the rights, in order to prevent a previous client of the lawyer (a judgment creditor of the later client) from availing himself of the client's interest in those rights for the satisfaction of the judgment.

Right of the lawyer (in such case) after the former client has been paid in full.

Right of a lawyer, draughtsman of a will, to insert his own name as executor at the urgent request of the testator.

Conditions, if any, under which foreign corporation chartered with express powers to procure and furnish legal services for its customers, may do its business in New York.

Whether a lawyer named in a will as executor is to be condemned for doing his own legal work in respect to the estate (without any charge therefor) instead of employing and compensating other counsel.

Acceptance of the defense of persons charged with the murder of a former client; and (in such case) criticizing the widow of the former client for suing the alleged murderers for causing her husband's death.

Repeated questions respecting the professional propriety of various methods of endeavoring to secure professional employment by advertisement and solicitation.

Acceptance of a retainer to settle with creditors and procure their "moral assurance" that the debtor will not be prosecuted criminally.

Procuring extension of time to plead in suit against client to recover a debt, and in the interval aiding client to dispose of all his property in payment of another alleged debt owing by him.

The abuse of fellow lawyers in debate.

The continuation of a firm name, including the name of a deceased partner by the sole survivor.

Solicitation by circular, of employment for the collection of bad debts.

Conduct by a lawyer of a real estate and insurance business in connection with his law practice.

Organization by lawyers of a real estate company consisting of such lawyers.

Purchase and enforcement of delinquent tax certificates by attorney.

Assisting in a voluntary transfer by a wife to delay and if possible to prevent realization against her, upon a bond and

mortgage given by her to a creditor of her husband without valuable consideration moving to her.

Omission from a trustee's account presented to a court for judicial settlement, of all indication of a misapplication of funds by the trustee in disregard of a former direction of the Court.

Duty of a lawyer in advising, where the legal rights of creditors appear to conflict with the moral obligation of their debtor to his wife and minor children, and where such moral obligation is also supported by a doubtful claim of legal obligation.

Whether a lawyer testifying as an expert witness upon the value of legal services can properly express the opinion that a woman's services are worth only a fraction of the value of a man's under otherwise similar circumstances.

Endeavoring to procure a settlement of a disputed claim asserted as a legal right, by threat of disclosure to the prosecuting attorney of the facts of the transaction.

Propriety of aiding a collection agency in the performance of services apparently constituting the practice of law.

Acceptance of retainer directly from client, where the acquaintance was the result of employment as counsel in a former litigation by client's attorney therein.

Refusing tender of full payment of judgment because it is made by a third person in behalf of judgment creditor, and then issuing execution.

Whether general counsel of a corporation can with propriety also be a member of its Board of Directors.

Law student printing cards showing his association with lawyer.

Foreign attorney opening office in New York to give advice respecting foreign law.

Whether a lawyer, or some one in his office, may properly act as assignee for the benefit of creditors of a client.

Right and duty of a lawyer in exceeding his instructions, under unforeseen circumstances, in the absence of a client, where it becomes apparent that he cannot follow his instructions, and complete failure to act will result in loss to client.

Propriety of a foreign corporation, formed for the benefit of its members, furnishing or procuring in New York legal services for them, either at its own expense or to its profit.

Propriety of professional cards addressed to members of the Bar soliciting employment and referring at length to former positions and experience of the lawyer.

Placing of a layman's name upon the letterheads of a lawyer, as his assistant.

Placing a lawyer's name as counsel upon the face of the printed contracts of a detective agency.

Repeated questions respecting matters within the province of the Committee on Discipline, or the Committee on the Unlawful Practice of the Law of the Association.

Advertising as a lawyer in a selected list of highly recommended advertisers belonging to a club formed for the purpose of united advertising.

Advertising to procure divorces.

Managing clerk having printed card showing his location with attorney (not mentioning that he is an attorney).

Duty of substituted attorney who has collected a claim by litigation, when his client has agreed with his former attorney in the action to compensate him from the proceeds, but now refuses to do so.

Circulation by lawyer of application for charity to enable him to print and press an appeal from a conviction in a criminal case on behalf of a client without means.

Acceptance of retainer against a former client after severance of all professional relations with him.

Superintending a column for legal advice maintained in a periodical published by a corporation, and preparing such advice in answer to inquiries addressed to the editor.

Announcement by commissioner of deeds (not a lawyer) that he has opened an office in connection with a lawyer named.

Acceptance of employment through a division of fees with a lawyer admitted to practice but not actively practicing his profession during his employment in a non-professional capacity by a corporation.

Insertion by firm of lawyers upon their stationery of the name of the second lawyer in the last-mentioned question.

Acceptance of employment in behalf of a person while engaged in pressing a claim against him in an independent matter in behalf of another client.

Duty of lawyer employed as clerk, to his employers upon receipt of independent employment secured through business done for employers.

Claim of surprise by lawyer to exact a condition from his adversary at trial, and condition having been exacted then insisting on proceeding with trial as though not surprised.

Acceptance of employment by lawyer of this state from an individual undertaking under the name of a voluntary association to procure and furnish legal services for persons designated as members of the so-called voluntary association.

[Year Book, 1917, pp. 150-154.]

Accepting and utilizing the evidence of witnesses voluntarily furnished by a husband of his past adultery, upon condition, exacted by the husband, that in the event of divorce the wife will not claim alimony or counsel fees.

Accepting employment against former clients, after termination of former employment, and not involving the disclosure of confidential communications.

The effect upon the professional relations of lawyers for collection agencies of Chap. 254 of New York Laws of 1916.

The propriety of a law student having a card containing printed upon it the name of the counselor at law in whose office he is employed.

Whether the regular counsel for a public body may properly undertake to advise it, in a matter where he has a conflicting personal interest, provided he advises against that interest.

Whether a lawyer convicted of felony in another state, and released on bail pending appeal, may properly continue to practice.

Whether an attorney is justified, with his client's consent, in making a demand for costs in pending litigation, but recoverable only upon final judgment, a condition for an extension of time to pay the debt.

Whether it is improper for an attorney to serve process upon a visitor to his office who has come relying upon his inference, derived from the attorney's silence and apparent acquiescence, that if he makes such a visit he will not be so served.

The propriety of a partnership between an English barrister at law and a New York counsellor at law, each to handle only those matters pertaining to the law of his country.

Whether it is improper for a lawyer to accept employment from a collection agency to make a collection, if the agency selects him from a law list in which his name appears.

Whether a certain form of advertising is proper for a legal periodical.

The propriety of an attorney conducting for a newspaper a column entitled "Department of Free Legal Advice" with or without the appearance of his name; and with or without compensation; what would be such attorney's obligation of secrecy in respect to his anonymous connection with such a department; and how could such department be properly conducted, if at all.

Whether an attorney may properly furnish to his clients his letter-heads for their correspondence with their debtors.

Whether a lawyer may properly conduct a loan brokerage and real estate business in connection with his law practice.

Whether attorneys of different states may properly be law partners.

Whether one member of a firm may properly act as attorney of record where it would be embarrassing for purely personal reasons for the firm to do so.

Whether one member of a firm may properly appear as attorney of record for his own firm in a litigation to which the members of the firm are parties.

The propriety of a notice, incident to the change of a lawyer's address, which contains advertising features.

The propriety of anonymous advertisements by lawyers seeking employment upon contingent fees.

Whether an attorney may properly accept employment from a collection agency upon a salary; and whether he may properly communicate directly with the patrons of the agency concerning their matters under his supervision.

Whether, to what extent, and upon what conditions, an attorney may accept a rebate from those with whom he deals in behalf of his clients.

The propriety of a certain specified form of advertising by an attorney. Why it is wrong to incorporate a law firm.

Whether it is wrong for an abstract company to solicit business.

Whether and to what extent attorneys should prosecute an appeal under a retainer which did not imply such duty, but the client erroneously supposed it did.

Whether in a civil action an attorney for the plaintiff can properly arrange with one of several defendants to give evidence in favor of his client, under promise of preferential treatment of such defendant.

Whether an attorney may properly file suit for divorce where a similar but not an identical issue has been adversely determined between the same parties in another state.

Whether a lawyer may properly send to the client of another lawyer a newspaper clipping directing the client's attention to a litigation in which the first mentioned lawyer has been successful in securing the construction of a clause in a disputed contract, favorable to the client's contention, though the second lawyer has been unable in litigation in another court to secure such construction.

The steps to be pursued by a disbarred attorney when his counsel in the disbarment proceedings is subsequently adjudged mentally incompetent, and the client feels that such incompetency explains the reason why his counsel refused to present his defense as the client insisted it should be presented.

Whether a lawyer may properly accept the defense of one whom he knows to be guilty as charged, when he is confident of his acquittal because of the inability of the prosecution to prove the charge.

Whether a lawyer may properly give his card to a bank, of which he is a director, for distribution to inquires for a trustworthy legal adviser.

Whether and to what extent a lawyer conducting a collection office may advise his clients or patrons and others of information received by him from correspondents of debtors in failing circumstances, for the purpose of obtaining claims against them for collection.

Whether a lawyer, who is also a notary public, may solicit employment to secure tax exemptions authorized by law, but requiring the filling of blanks furnished to all applicants by the taxing authorities.

Whether the lawyer's stenographer may do the like, accepting and retaining all fees for such services.

How a lawyer may properly conduct a collection agency.

The propriety of various specific forms of advertising pursued by various lawyers.

The propriety of lawyers placing professional cards in local newspapers.

Whether a lawyer can properly accept a salary from an association to furnish legal advice to its members.

Whether a lawyer who has a lien on a judgment in favor of a client who has assigned the judgment, may properly assign his lien for a consideration to officers of the judgment debtor, a corporation.

Whether and to what extent attorneys for a trustee can properly advise their client to participate in a dispute between beneficiaries so as to throw the expenses of the dispute upon the trust fund.

Whether and to what extent it is improper for corporations to do, and for lawyers to assist them in doing, for others what if done by lawyers would be professional employment, but if done by laymen would not be deemed the practice of law.

Whether an attorney who in settlement of a controversy advises his client, a corporation, to give a mortgage, can properly thereafter in a suit to foreclose the lien file, as attorney, a verified answer disputing the validity of the lien.

Whether an attorney may properly accept employment from one person to sue a brother of the latter for damages by his negligent conduct, when the two brothers are on perfectly friendly terms, and would not engage in litigation, notwithstanding the negligence and damage, except for the fact that the negligent brother has a policy of accident insurance, and he will not be the real loser in case of recovery.

Whether it is proper for a law clerk not admitted to practice to examine judgment debtors in supplementary proceedings.

Whether the committee has the power to grant dispensations to unwitting offenders subject to discipline (a power which was of course promptly disclaimed).

Whether the committee will examine and put its stamp of approval upon the business literature of attorneys engaged in subsidiary occupations (a function which was also declined).

Whether an attorney is justified in making to a jury a specific statement literally true in fact, but designed and likely to create a false impression.

Whether an attorney having advised an assignment for the benefit of creditors may then present for the assignor a voluntary petition in bankruptcy.

Whether one of two office associates (not partners) may properly, without the consent of the other, accept professional employment from a dissatisfied client of the other.

Whether it is improper for a lawyer to continue to prosecute a suit for a client, after he is advised that a previous suit upon the same cause of action has been settled and compromised after judgment and appeal by the adverse party, and the appeal abandoned and the former suit discontinued, all pursuant to such settlement and compromise.

Whether an attorney may properly prosecute a divorce action for a client when he knows facts which constitute a defense, and which if disclosed to the Court would lead to a refusal of the divorce, but he knows the defense will not be interposed.

Whether it is improper for an attorney, acting as notary, to take an affidavit of verification to a pleading in an action for divorce, when he has personal knowledge of the falsity of the allegations.

Whether it is improper for an attorney at law, employed by the resident agent and attorney in fact of a foreign citizen, resident abroad, to communicate directly with his foreign client concerning the matter of his employment, without the knowledge or consent of the agent who employed him, especially if he takes the occasion to express the hope that his employment may lead to future direct relations with the foreign client and other direct employment from him.

[Year Book, 1918, pp. 152-158.]

Conduct of attorney in defending suit for an admitted debt contrary to the express instruction of his clients and appealing without authority from an adverse judgment, thus increasing the amount of costs and injuring the credit and reputation of his clients, who had given him the money to pay the debt.

Acceptance of employment to prosecute divorce action against former client.

Charges for legal services to registrants under the Selective Service Law and Regulations.

Unreasonable or excessive charges for such services.

Charges to third persons for such services to registrants.

Sharing by an executor of fees earned by his partners as attorneys or counsel to him in his official capacity.

Insertion of professional cards in foreign language newspapers.

Soliciting employment to enforce or collect stale judgments.

Withholding money from client to satisfy judgment previously obtained against him by his lawyer.

Accepting employment from general guardian of an infant to settle a dispute without the knowledge of the guardian *ad litem* in a suit concerning the dispute.

Filing note of issue without serving notice of trial.

Drawing will containing charitable bequest to be administered after the war by an enemy government.

Relations of New York attorney to foreign collection agencies in view of Secs. 270 and 280 of New York Penal Law.

Securing a delay in execution in order to enable a client to transfer his assets to his attorneys to the prejudice of the indulgent judgment creditor.

Agreement for contingent fee, attorney to advance expenses of litigation.

Entering judgment and proceeding to enforce it, though client has already accepted full payment, but without costs.

Prosecuting proceedings to secure release of client adjudged incompetent.

Threatening a lawyer with prosecution for alleged misconduct in his profession, in order to induce him to waive or surrender an alleged right of his client.

Enforcing a judgment duly entered against an impoverished client for legal services, but unjust and oppressive in its operation.

Accepting employment and compensation from a membership corporation to advise its members, in view of Sec. 280 Penal Law.

Demanding compensation for testifying as witness to a will and yielding to such demand.

While general counsel for corporation, accepting employment from minority stockholder to prevent unlawful conduct of majority, in name of corporation.

Settling with an injured person without litigation but without the knowledge or consent of his lawyer who has solicited employment and entered into a contingent agreement to sue for the damage.

Advising the alleged wrongdoer in the case last instanced, that the lawyer has no standing which demands consideration.

In the case last instanced buying peace from the soliciting lawyer.

Pleading according to assumed legal effect when doubtful as to actual legal effect.

Advertising by distribution of blotters containing legend "consultation free."

Advertising "questions of law answered by mail."

Obtaining preference for a wife as a creditor of her husband.

Making a wedding present to the bride of a judge.

Annexing to brief an appeal stipulation respecting matters on appeal where some of the parties to the appeal are not parties to the stipulation.

Stipulating for a judgment creditor who has successfully maintained an action to set aside a fraudulent conveyance of the judgment debtor, to vacate the decree setting aside the conveyance upon payment of the judgment, so as to prejudice the rights of a subsequent judgment creditor of the same debtor.

In the last mentioned case the stipulation had been promised without knowledge of the subsequent judgment, but knowledge had been acquired before the stipulation was actually signed.

Retention of trial counsel by a lawyer who has himself accepted the retainer but finds himself unable to try the case.

Accepting employment from a magazine to conduct a column of questions and answers on matters of law.

Executing in behalf of a partnership upon its dissolution a consent to a substitution of the individual lawyer signing the consent, as attorney of record, in place of the firm.

Disclosure of a client's secret, learned in the course of other professional employment by the client, concerning property which he has fraudulently removed and concealed.

Abandonment of client's service without sufficient cause or reasonable notice.

Duty to pay costs where in an action for libel the lawyer drawing a complaint has not properly stated the libel, which was in a foreign tongue, by reason of which costs are imposed for the withdrawal of a juror to allow an amendment.

Withdrawal from case on eve of trial without consent of client and without adequate excuse.

Assignment of claims to attorneys' clerks to act as petitioners in bankruptcy.

Discovery of conflict of interest between a client in whose behalf a lien is being enforced and another client who has the attorney under annual retainer.

Accepting retainer from woman to secure annulment of marriage while an infant, to an unwilling man who was induced by threats of her parents, and therefore with their consent, to marry her.

In the last mentioned case, accepting the employment at the instance of the man's father.

Attorney's use of letter-heads of a collection agency with his name upon them in enforcing collections for it.

Collection agency's use of similar letter-head containing names of its counsel, in demanding payment of claim. (This inquiry closed with the question, not answered by the Chairman: "Whether the individual who signed this letter and sent it out claims to be a Christian?")

Whether Sec. 270 Penal Law forbids recommending an attorney to another.

Undertaking litigation for a collection agency upon a contingent fee.

Undertaking litigation for a collection agency for a certain stipulated fee regardless of results.

Whether there is an implied pledge of secrecy when a lawyer is urged to accept employment to do a dishonorable act and when after his refusal he is asked to recommend another who will accept the employment.

Whether when a lawyer is requested to accept dishonorable employment he should warn the person seeking to employ him that the proposal is not under the pledge or implication of secrecy or confidence.

Whether a lawyer may properly disclose any matter, no matter whether unlawful or dishonorable, which has been discussed in his presence pending a proposition to employ him.

Whether in the last case the lawyer is under a duty of secrecy because he did not terminate the disclosure in his presence as soon as he had an intimation of its character.

Permitting a clerk, not admitted to the Bar, to argue motions and appeals and to try actions and to sign briefs.

Whether an attorney may properly accept collections from a collection agency upon such a reduced compensation to the attorney as to permit the agency to make a charge without the whole fee exceeding the usual amount charged by attorneys for similar services.

Accepting employment to prosecute an action for divorce on the ground of adultery, where the principal witness permitted the act of adultery to be committed on his premises.

Advertising by a simple professional card in a foreign language in newspapers published in that language.

Solicitation of collections by a Mercantile Agency by circulars stating among other things the name of the agency's lawyer and his rates of charges for services to the agency's patrons.

Rights and duties of lawyers as counsel to registrant under the Selective Service Law.

Employment by attorney as stenographer and record searcher of a person who has consented to have his name stricken from the roll of attorneys.

Advertising in a souvenir book issued by a society of which the attorney is a member.

Filing certificate of corporate name for a client which resembles the name of an existing corporation.

Acceptance of employment by lawyer holding an uncompensated public position to enforce a contract for a client against a third person who procured supplies from the client to fulfil an engagement previously made by the third person with public officials, of whom the attorney was one.

Law student engaging in "collections" and circulating cards so indicating.

Purchase of a collection business by a lawyer.

Settlement of a cause of action in litigation and then beginning a new suit upon counterclaim which was not mentioned in making the settlement.

Member of Board of Education accepting employment to collect from principal commissions of agent who for principal sold goods to the board.

In last mentioned case utilizing position as member of board to withhold payment from principal until he settles with his said agent.

Advising wife respecting the enforcement of her rights under a decree of divorce, obtained while acting as attorney for the husband.

Interposing unverified answer containing denials, in a divorce suit, though apprised that the charges so denied are true.

Formation of alliance for law practice between lawyer, who is also insurance broker, and an established law firm, and notification of such alliance for law practice and of broker's individual continuance of insurance business, to broker's insurance customers.

Accepting employment from a corporation for a fixed retainer and agreeing to remit to it all costs awarded to it as a party in numerous small actions which would not be awarded if it did not have attorney.

In last mentioned case agreeing that the corporation shall perform all services usually rendered by an attorney except where the attorney's actual personal presence in court becomes necessary.

Diverting check given by a client for payment to a judgment debtor, so as to secure payment to another client, the judgment creditor.

Utilizing information furnished by another attorney who solicited opportunity to collect stale judgment, so as to collect judgment without employing or compensating him.

In the last case in view of the nature of the information disclosed it appeared that except for disclosing the information

the amount of the soliciting attorney's demand for compensation was excessive.

Duty of a lawyer who is engaged for a certain fee, when a verdict is set aside and new trial granted.

Duty of a lawyer who is engaged upon a contingent fee, when his client refuses to pay disbursements and refuses to substitute another attorney.

Acting for husband in an annulment action, after acting for wife in previous litigation to secure previous interlocutory decree of divorce from prior marriage; the ground of annulment being that present marriage was celebrated before entry of final decree of divorce from prior marriage.

Refusing to apply for bankrupt's discharge because of his failure to pay for previous services in the proceeding.

Acceptance of employment from wife in separation action, where partner in same law firm formerly represented husband who then pleaded a divorce, which however was invalid.

Acceptance of employment in divorce action to procure a divorce for wife, from lawyer's brother.

Acceptance of employment in divorce action where principal witness is lawyer's brother.

Whether a corporation may properly be formed to supervise and advise respecting income tax and war excess profits tax returns.

Whether an attorney may properly permit his name to appear upon its letter-heads-as counsel.

Undertaking annulment action for impecunious wife who has an indubitable cause of action, upon agreement of husband to pay her attorney's fees.

In a jury trial offering a letter which is obviously incompetent as evidence, and upon its being ruled out, remarking in the presence of the jury that he will give his adversary a chance to be fair and then asking him to consent to its admission.

Upon the refusal of the adversary to consent to its admission interrogating a witness as to its contents, though the counsel has already admitted that it is incompetent technically and legally.

Use of trade name by an attorney at the instance of his clients, in undertaking their collections.

[Year Book, 1919, pp. 139-143.]

Laymen investigating and collecting judgments without legal process; with or without association with attorney.

Form of card announcing law partnership with specialty to be followed by each partner.

Use of attorney's name upon a draft of a client as an intimation that in event of refusal the draft will be delivered to the attorney for collection.

Insertion of attorney's name upon stationery of client, a trade organization.

Notification by lawyers to debtors of members of trade organization that all facts of their transactions will be reported generally to such members as basis of credit.

Compensation for legal services rendered to registrants under the Selective Service Law and Regulations.

Disclosure to alien property custodian of confidential information respecting contents of decedent's will in favor of wife of alien enemy.

Including wife to purchase judgment against her husband to avoid its execution.

Enforcing judgment against bankrupt with knowledge of his adjudication and election of trustee.

Lawyer's right to demand compensation under a contingent fee agreement after client has refused to accept a settlement of his cause of action insisted upon by the lawyer, and the lawyer has then "washed his hands of the whole transaction," and the client has then himself negotiated a more favorable settlement, upon which the fee at the contingent rate would be greater than upon the settlement urged by the lawyer and refused by the client.

Dunning notices in imitation of summons.

Oppression of poor within legal rights of client.

Acceptance of employment involving inconsistent obligations to various creditors of the same debtor.

Inducing payment by wife of debt of her husband by threat of resort to legal process inappropriate to the right asserted.

Gross deviation from facts known to attorney, in his formulation of complaint in action.

Legal rights of attorney growing out of specific contract of employment.

Right or duty to disclose to Alien Property Custodian confidential information of client's custody of enemy owned property.

Right to disclose information received confidentially from a registrant under the Selective Service Law and Regulations, which indicates contemplation of the commission of a fraud and of a crime.

Institution of divorce action upon information furnished by guilty husband in consideration of receipt by wife of lump sum as alimony and counsel fees already awarded to her by decree of separation.

Acceptance of employment by member of Legal Advisory Board to obtain discharge of a foreign subject (a regular client) from service to which he is not lawfully liable in the national army under the Selective Service Law and Regulations.

Right and duty of creditor's lawyer, who receives in settlement of claim in suit check of debtor's attorney, and delivers release and stipulation of discontinuance, when he subsequently learns that debtor procured his lawyer to advance his check for the settlement, and neglects to reimburse his lawyer, and debtor's lawyer tenders return of release and stipulation, and demands return of his payment and insists that debtor's surety in the action be proceeded against.

Form of advertisement by lawyer of his readiness to advise in matters in other distant states—especially if data given might be taken to imply a willingness to undertake divorce litigation in distant state.

Extent to which former counsel for enemy government and enemy subjects, formerly representing enemy government, may upon demand for federal and state authorities disclose confidential information concerning their former employment prior to the existence of a state of war, and extent to which they should assert their client's privilege.

Lawyer's charge for legal services in securing discharge from military service of one of two brothers, both inducted simultaneously, either of whom would have been exempt on account of dependents, if the other had been first inducted.

Continuation of practice of an attorney in military service in France, and under his name, including institution in his name of new suits for his clients, during his absence by another attorney at his request.

Lawyer's advice to client to employ designated detective to discover evidence of her husband's future unfaithfulness.

Acceptance of employment during the war to demonstrate the legal rights of the German born widow of a British subject to escape the impositions of employees of a federal bureau under their claim that by reason of birth she is under disabilities as an enemy alien which would not attach to a British subject.

Acceptance by lawyer of employment from trade organization to advise its members respecting infringement of trademarks.

Acceptance of compensation for such service out of membership fees of organization.

Appearance of attorney's name on such organization's letter-heads as its trademark counsel.

Advice under such employment to committees and officers of organization respecting answers to inquiries from its members concerning their trademarks.

Direct and urgent solicitation of professional employment.

Puffing advertisement by a lawyer of his especial qualifications and experience in a particular branch of law.

Direct solicitation of professional employment by circularizing distant lawyers.

Right of lawyer employed by one railroad to continue employment against another after both are taken over into federal control.

Use of lawyer's name as counsel, in circular of income tax expert, soliciting employment for the advertiser.

Acceptance of pay and employment from a corporation to supervise for an infant settlement of its claim against corporation, with authority of a court after full disclosure to it of the fact of such pay and employment.

Amount of charge for legal services in respect to registrant under Selective Service Law and Regulations.

Speculation by lawyer in defaulted securities under conditions of apparent oppression and hardship.

Duty of lawyer who learns of false claim of his client to right to allotment as wife of soldier, while she is already wife of another, and that she is seeking divorce decree from this other, although her relations with the soldier would disentitle her to the decree as an innocent woman.

Representation of bankrupt and receiver in bankruptcy by same attorney.

Employment of lawyer by insurance company to answer inquiries of their policy-holders respecting their legal rights under policies.

Advertisement by corporation to perform service in respect to income tax.

Form and propriety of announcement of lawyer's return to active practice after termination of military service.

Continuation of firm name after death or retirement of member.

Acceptance of employment containing possibilities of inconsistency with duty to former client.

Conduct of trial and appeal in behalf of dissolved corporation with knowledge of its dissolution and without apprising adverse counsel or court of dissolution.

Defeating equities by sharp practice in assertion of legal rights of client.

Acceptance of employment to appear for absent defendant in divorce action under circumstances awakening a suspicion that the action is collusive.

Abandonment of client by Judge (acting as his counsel) and determination by Judge (acting as Judge) adversely to his client so abandoned.

Disciplinary remedies against such Judge.

Employment of lawyer by layman to prosecute actions procured by layman's solicitation, through his access to police blotters and entree to hospitals, and compensation of layman for investigation, collecting evidence and preparation for trial, out of lawyer's net return.

Employment of lawyer by labor union or employers' association and compensation by it for services to individual members in general labor difficulty.

Institution of divorce action against husband upon his confession of adultery to wife's attorney, pending a separation action by wife, and motion to punish him for contempt therein.

Acceptance of employment from judgment debtor by lawyer for judgment creditor, to avoid a mortgage upon judgment debtor's property, upon which execution has been levied under the judgment.

Disclosure by such judgment creditor's attorney to third person at request of judgment debtor, of grounds for avoiding such mortgage as a lien prior to lien of execution on such judgment.

Solicitation by circular letter of employment for lawyer.

Solicitation of lawyers to employ lay agency to attend for them to their client's income tax matters without disclosure of the fact by the lawyer to his client.

Letting of part of lawyer's office to young lady as collection agency, with understanding that lawyer is to be retained in case of suit for collections.

Lawyer's entry of judgment upon insistence of his client for default in payment of notes given in settlement of action for breach of promise of marriage, with stipulation for entry of judgment upon default, after lawyer has learned that plaintiff was married to another prior to the promise, who disappeared without leaving evidence of his death—information of such marriage being alleged by maker of notes as reason for his default.

Lawyer's acceptance of employment from distant collection agencies to make collections for their patrons, and method of proper arrangement of fees.

Suit by lawyer for commissions upon collection upon suspicion that his client has received payment through lawyer's efforts and concealed the collection from the lawyer.

Entry of judgment by default in such case.

Card of lawyer, employed by a corporation, containing reference to such employer.

Acceptance of employment by lawyer to represent interests adverse to subsidiary of former client, in whose name lawyer was formerly employed by former client.

Nature and limit of obligations imposed by such former employment.

Proper limits of activities of lawyer in such new employment and obligations to new employer to disclose possible impairment of usefulness to him by reason of such limits.

Avoidance of all ground for suspicion by new employer that the lawyer is willing to take any improper advantage of his former employment for the benefit of his new client.

Partnership in the practice of law between lawyers admitted to practice in different states, but not in the same state with each other.

English solicitor opening office in New York City for advice respecting English law, and for consulting clients respecting employment in England.

[Year Book, 1920, pp. 131-134.]

What constitutes practicing law or engaging in the law business.

Rendition of legal services to non-declarant alien registrant under Selective Service Law and compensation therefor, and contribution thereto by several registrants similarly situated.

Division of commissions of real estate broker with seller's attorney with knowledge and consent of his client.

Acceptance by attorney of directorship in a corporation without compensation for services.

Acceptance by an attorney, a salaried officer of a subordinate lodge of a beneficial order, of employment to sue the supreme lodge of the order upon a beneficial certificate therein.

Compensation of witness for time lost by him in attendance upon trial.

Solicitation by attorney of professional employment from clients of former employer, an attorney, now deceased, though his office has been taken over by a third attorney.

Agreement of wife, suing for divorce, with her husband, not to ask alimony or counsel fee in consideration of husband's agreement not to contest; advice of attorney thereon.

Attorney inducing client to file false pleading.

Private interrogation by one attorney of a witness in attendance at the trial under subpœna of the opposing party.

Attorney seeking share of fee in a divorce action, received by attorney of another state, because the client was formerly

a client of the first attorney and introduced by him to the second attorney, who procured the divorce upon employment by the client so introduced, and for a fee agreed upon between the client and the second attorney.

Circularizing members of a profession by an attorney offering them the facilities and hospitalities of his office when visiting the city.

Acceptance by attorney of employment directly from a client, after having been previously employed for the client in another matter by another attorney to assist him; such former employment being the origin of the first mentioned attorney's acquaintance with the proposed client.

Whether in such case there is any duty to account to such former attorney of the client, for any of the compensation under the new employment, or to advise the client of any division of the fee therefor, if so divided.

Solicitation of life insurance by attorney.

Acceptance of employment from corporation to establish a legal department for collection of claims for its customers.

Resort to sharp practices by attorney to circumvent efforts to penalize clients for unintentional violation of penal statutes.

Writing personal letter to judge pending determination by him of matter argued and submitted.

Apportionment or division of fees between a practitioner in the Netherlands or in New York City, and a practitioner in Japan.

Solicitation of representation in law list.

Advertising by card in legal directory.

Disclosure to another attorney at his request of record used in Court of Appeals tending to show mental incompetence of client.

Organization of association to employ lawyers to collect claims for widows and orphans upon a contingent fee.

Acceptance of employment from corporation organized to purchase claims for enforcement by suit, and basis of lawyer's compensation.

Acceptance of employment from mercantile association to collect claims for its members.

Form of announcement to lawyers.

Advising client to place order for goods with a dealer in order to avail of unpaid purchase price as an offset to unpaid bill owing by the dealer to the client.

Advising utilization of surplus money in hands of mortgagee to pay selected creditors of mortgagor, an insolvent corporation.

Duty of attorney for corporation in such case in advising mortgagee, a stockholder and director of the corporation.

Right and duty of attorney in advising officials of school that a minor pupil, who has consulted him professionally upon a confidential matter involving secret family history, proposes to take a step by reason of such history, disadvantageous in the opinion of the attorney to the best interests of the pupil, which may be prevented by the school officials.

Compromise and settlement of action after verdict.

Defense of radical agitators in the courts.

Objection of landlord to tenant because the tenant, an attorney, has a class of clientage frequenting his office to whom the landlord objects as tending to depreciate the esteem and consequently the value of his property.

Relations of counsel in subsequent dealings with clients of an attorney who first employed the counsel in their behalf.

Accountability of such counsel to such attorney for division of counsel's compensation for subsequent transactions with such clients.

Whether such counsel should retire from the first employment upon the discharge of the attorney by the client.

Testimony of trial counsel in behalf of his client.

Acceptance by attorney of interest in letters patent as compensation for services in respect thereto in litigation thereunder.

Form of card of attorney soliciting employment.

Division of fees between domestic and foreign lawyers.

Employment of attorney by membership corporation to litigate for its members.

Stipulation to compromise and settle action after verdict on condition that verdict be set aside.

Acceptance of employment from husband to secure divorce, after termination of employment by wife to prosecute husband to compel support of wife and children.

Obligations of lawyer through whose neglect or oversight his client has suffered pecuniary loss.

Appearance of ex-Judge as counsel upon a new trial, which he has granted while acting as Judge.

Obligations of lawyer whose neglect or oversight has occasioned an affirmance upon appeal of a judgment adverse to his client.

[Year Book, 1921, pp. 139-142.]

Representation by an attorney of one client in an action, while prosecuting another action against him in behalf of another client.

Suggestion by such attorney of another attorney occupying the same offices but not otherwise associated with him, to represent the first client in defending the action against him and in prosecuting the action in his favor.

Propriety of treating corporate meetings as duly held and keeping, furnishing and certifying minutes thereof, upon waiver or consent to all stockholders or directors, though no one actually attends.

Representation by an attorney of two different women at the same time in separate actions against the same man, for breach of promise of marriage.

Stamping upon an abstract of title prepared by an attorney a statement of the fact that to aid in re-examination he keeps a record and memoranda of his examination.

The propriety of a fee deemed by a client to be exorbitant.

Payment by seller of compensation of purchaser's attorney.

Agreement by vendor that his counsel will furnish to a purchaser a professional opinion to aid the latter in accomplishing a resale of the property purchased.

The practice in respect to a minimum fee schedule.

Acceptance of professional employment from a son to prosecute an action for negligence against his father, the father being insured against such liability, but such suit being necessary to establish the father's liability, before he can recover under the policy.

Maladministration of a trust for the benefit of a client, so that the client may profit thereby.

Attorney's accepting professional employment to bring an action to establish liability of a former client, who in incurring the liability now asserted acted under the advice of the attorney that his conduct would not render him liable.

Accepting employment from a real estate broker to collect his unpaid commissions from a vendor for whom the attorney acted in drawing a contract of sale and deed, upon which the purchaser defaulted.

Duty of lawyer who discovers that a professional colleague in a pending trial has falsified a record which he intends to offer in evidence, and who succeeds in preventing the fraud upon the Court; whether it is his further duty to expose the intended fraud so that the offending lawyer may be disciplined.

Accepting professional employment to prevent a party to a fraud from setting aside a fraudulent conveyance made by him, after having represented a person defrauded thereby in a suit to set aside the conveyance and having effected a settlement of such suit.

Attitude of a clerk employed in a law office, and intending to establish his own office and practice, toward clients of his present employer.

Lawyer utilizing his relation as adviser of a client to gratify lawyers animosity toward one with whom client is dealing under lawyer's advice.

Soliciting employment from strangers to collect unpaid judgments, though professing peculiar knowledge enabling their enforcement.

Lawyer hanging his sign in front of another lawyer's residence in order to injure him.

Lawyer, after incurring expense in behalf of client (who repudiates his act), paying debt so incurred by him and taking assignment of the claim against his client for purpose of compelling its payment by client.

Lawyer co-operating with agent of a client to exceed agent's authority in order to gratify lawyer's animosity toward another by taking oppressive action against him.

Accepting professional employment from debtor to represent him in bankruptcy, after having recipitated his insolvency by foreclosing a chattel mortgage upon his effects held by his creditor, who still remains a creditor.

Appearing in court as an attorney dressed in a United States uniform.

Whether attorneys for receiver in bankruptcy can properly attempt to control election of trustee.

Whether trial counsel can properly become a witness in behalf of his client when to the knowledge of the attorney the adverse party testifies falsely.

Whether lawyers of different states may properly form a law partnership with offices in both states.

Accepting employment to procure a divorce in behalf of one who has for years been living in adultery, and in order that he may marry his paramour, who is commonly known as his wife, and who sustains to him the apparent relation of wife.

Solicitation of professional employment through advising merchants of the failure of their debtors.

Propriety of a lawyer's giving newspaper publicity to the commencement or contemplated commencement of actions brought by him.

Utilizing upon a trial information obtained from an incompetent.

Utilizing upon a trial information obtained by deception.

Acceptance by employment from a collection agency to bring actions upon claims entrusted to it for collection.

Accountability to his employers of clerk of law firm for commissions received by him as temporary administrator of a decedent's estate in which his employers acted as legal advisers of a special guardian in opposing the grant of letters to the executor named in the will.

Acceptance by a lawyer of claims for enforcement against a client whom he represents in pending litigation.

Duty of a lawyer toward a client for whom he has collected and holds money, when he is also a business partner of the client and in the affairs of the partnership he is a creditor of his client.

Propriety of receiving money for account of an insolvent client from a third person, and paying it to a creditor of the client, without inquiring whether it is the client's money, and an unlawful preference may thus be facilitated.

Relations between counsel and attorney in respect to their compensation out of a small estate, inadequate for complete compensation to both.

[Year Book, 1922, pp. 143-146.]

Whether it is improper for a commissioner in condemnation proceedings to accept a retainer, during the pendency of the proceedings, from a claimant as his attorney in another matter.

Whether it is improper for a lawyer to advertise in a foreign language newspaper.

Division of fees between a lawyer who performs professional services and another lawyer who advises the employment, because he is so employed that he cannot himself perform the service.

Threat by a lawyer to institute criminal proceedings if his demand made in behalf of his clients is not complied with.

Letter-heads of lawyers, associated together, chiefly in federal court practice, one being an attorney of New Jersey, the other of New York.

Advertisement by a lawyer leaving for Europe, stating that fact and his willingness to attend to matters in European countries during his absence—with or without disclosure of identity of advertiser in the advertisement.

Acceptance of employment from one member of a family to recover for injuries negligently inflicted by another member, who is insured; the purpose being to fix the liability of the insurer.

Propriety of making a demand for payment of a debt due couched so as to create the erroneous impression upon the recipient that it is made pursuant to a decree of court directing that the demand be made, when the decree merely appoints the defendant to the position by reason of which he acquires the right and is under duty to make the demand.

Prosecuting a will contest after the client has requested his lawyer to desist.

Withholding money collected for a client under his power of attorney, and applying it on account of unpaid bill for other legal services rendered to him.

Procuring or permitting verification of answer containing inconsistent defenses.

Sending card of a lawyer to the family of a decedent announcing the lawyer's devotion to practice in the Surrogates Court.

Letter-head of a lawyer devoting especial attention to federal taxes.

Form of notice of removal of lawyer's office, indicating specialty pursued.

Announcement by lawyer of opening of department for the investigation and preparation of accident cases.

Agreement concerning matrimonial relations whereby in consideration of certain advantages a husband agrees to furnish his wife with proof of past misconduct upon which she may obtain a divorce.

Announcement upon the business cards of lawyers, of the name of a law clerk not yet admitted to the Bar.

Employment of lawyer at expense of insurance company, to represent the rights of an infant in effecting a settlement of a claim of the infant against which it has assumed an obligation of indemnity.

Use of the name of a lawyer in circularizing the competency, experience and methods of a detective agency.

Propriety of representing corporate meetings as duly held and so recording the minutes, though no one attended but all entitled to notice waived and consented to the action, recorded as taken.

Propriety of lawyer acting as secretary of a business corporation, though not a director.

Announcement in the official journal of another profession of a special line of practice, particularly related to the interests of members of that profession.

Conducting column in newspaper to answer legal queries, with or without the name of the lawyer giving the answers.

Representing one client in prosecuting his claims against another, while at the same time representing this other in a different matter.

Duty and right of lawyer when a conflict of interest arises between two clients over a contract drawn by him for both.

Waiver by wife of all claim of alimony as consideration to husband for disclosure by him of evidence of past offenses upon which a divorce may be obtained.

Propriety of subpoenaing husband to testify as a witness concerning his own impotency, in an action by the wife to annul the marriage for such impotency, where the husband has acknowledged the fact in a private conversation with the wife's lawyer.

Lawyer continuing to represent a client, after having assigned an unpaid claim for former services to the same client to another who as such assignee is suing the client therefor, but really for the benefit of the lawyer.

Engaging as licensed insurance broker while also practicing law.

Discussion by lawyers for litigants in pending litigation of the respective rights of their clients, in the newspapers.

Right and duty of lawyer when he knows that attorney for adverse party has knowingly caused a false answer to be verified by his client and interposed in an action.

Letter-head of law firm containing name of managing clerk not admitted to practice.

Sending professional cards to persons with Christmas and New Year greetings thereon.

Forms of collection letters.

Sharing fees of a real estate broker with client's consent.

Prosecution of action for divorce against one husband and at the same time for annulment of marriage to second husband, on the ground that the first husband was living at the time of the second marriage, though unknown to the wife; all in order to afford innocent second husband a later opportunity to marry the wife and legalize the children of the second marriage.

Attorneys for husband and wife entering into arrangement whereby husband furnishes evidence of past misconduct upon which wife can secure divorce.

Examining judgment dockets for unpaid judgments and soliciting employment to collect or enforce them.

After listening to a disclosure of the facts of a controversy and declining employment therein to represent the person making the disclosure, subsequently accepting employment in the matter from the adverse interest.

Circularizing members of the legal profession and offering inducements to them to employ the author of the circular in a special branch of practice.

Preparation of corporate forms by a notary public not admitted to practice.

Announcement by lawyer of opening of department for adjustment of claims connected with a special branch of practice; and circularizing commercial organizations in respect thereto.

Advertisement in commercial journals of announcement of lawyer's intention to leave for Europe and willingness to attend to professional or business matters while there; with or without disclosing his name.

Solicitation of lawyers advertising in law list to send their business to the lawyer making the solicitation.

Similation of a summons by a lawyer in advertising the business of a client.

Opening of law office in New York by lawyer of another state to act as general counsel for a foreign corporation doing business and maintaining an office in New York.

Editing a legal column in a foreign language daily newspaper.

Partnership between lawyer and certified public accountant in preparation of income tax returns.

Deducting from collection for a client, lawyer's charge for other services in a past transaction.

Prosecuting action against physician for pecuniary damages suffered by husband as a result of criminal operation on wife.

Circularizing property owners reminding them of the approaching expiration of the time to secure reduction of tax assessments.

Justice of the peace, acting as attorney, presenting demand in behalf of client, issuing summons thereon, acting as judge, conducting trial, entering judgment, and issuing execution thereon.

Attorney's patenting an improvement upon an invention submitted to him by a client to procure a patent therefor.

Accepting employment against a parent organization in behalf of a subordinate organization after having acted as counsel for the parent organization under a former employment now terminated.

Announcement respecting specialization in practice of income tax law and opening of accountancy department therefor.

Illicit practices in procuring divorces.

Use of firm name by associated lawyers of different states.

Furnishing witness with written statement to be memorized by him for purpose of testifying therefrom.

Association of law firm of New York with law firm of another state, and announcement of association.

Subpoenaing of persons to testify as experts, without consulting them or procuring their consent to give their expert opinions.

Association of New York lawyer with corporation of foreign country for interchange of matters involving professional employment of the lawyer.

Employment and compensation of cappers to procure the employment of lawyers.

Notifying defendants in negligence actions, or their counsel, of the danger that verdicts may exceed the amount of indemnity promised by the insurance companies who are defending them, and, therefore, of the desirability of employing additional personal counsel for the defendant in the action, and offering to accept such employment.

Business card of clerk not admitted to Bar, but referring to attorney in whose office he is serving a clerkship.

Form of circular by attorney at law engaged also in advising and soliciting insurance.

[Year Book, 1923, pp. 137-140.]

Acceptance of employment from an insurer to defend the assured; in such case the extent to which the attorney can take his instructions from the insurer.

Acceptance of employment to prosecute a claim against a client for whom the lawyer is acting as attorney in another matter.

The rights and duties of partners in a dissolved law firm in collecting fees due to the firm.

Entering into an agreement with a client to render to him professional services without charge in consideration of his recommending the lawyer to others.

Compilation and circulation by a lawyer of foreign nativity, among his fellow countrymen, of a pamphlet setting forth for their information a statement of the qualifications and authority of a notary public in New York State.

Circularizing policy-holders in an insolvent insurance company to procure coöperation among them for the common defense of their rights.

Form of sign of lawyer admitted to practice in federal courts and other states but not in New York.

Division of commissions between brokers and lawyers.

Demand against attorney who withholds his client's money, coupled with notice of intent to inaugurate disciplinary proceedings against him if he continues to withhold it.

Carrying on a general insurance and brokerage business by a lawyer.

Appearing as attorney for one person against another after having accepted professional employment (still continuing) from the latter on the recommendation of the former.

Lawyer acting as trustee under a chattel mortgage or deed of trust executed by a corporation to secure bonds.

The defense of usury interposed by a lawyer when sued upon his own obligation.

Lawyer engaging as associate with layman in loan brokerage business and dividing with him bonuses received from borrowers.

Rights and duty of lawyer in respect to disclosing to police the whereabouts of his client who is a fugitive from justice.

Form of circular letter devised by lawyer for circularizing his clients.

Conduct by lawyer (anonymously) of column in a daily newspaper for answering questions of inquiries as to law and legal rights.

Empowering an insurer to take from the insured at the time of the contract of insurance a general retainer and power of attorney to a specified lawyer to represent the insured in all matters covered by the insurance.

Acceptance of a retainer upon a contingent fee to secure the application of the funds of an incompetent to the support of a dependent relative.

Placing the name of a law student not admitted to practice upon a lawyer's office door.

Acceptance by a lawyer, formerly a clerk in the office of another lawyer and while there made secretary of a corporate client of the latter, of professional employment from a stockholder of the corporation to oppose its reorganization.

Acceptance by such former clerk and secretary from such stockholder of employment to appear as his attorney in litigation against the corporation and the former employer also a stockholder of the corporation.

Acceptance by a lawyer who drew a contract for several contracting parties, of employment from some of the parties against the others in a controversy between them over its proper construction.

Establishment in New York of an office by a firm of lawyers admitted to practice in other states and in the federal courts, some of whom are and some of whom are not admitted to practice in New York.

Use of a firm name in New York by such partnership.

Participation of a lawyer in the organization of a bureau for the promotion of arbitration among its members.

Insertion of lawyers' cards in a city directory.

Acting as lawyer for company which contracts to furnish legal counsel.

Acting as lawyer for association which takes assignments of claims of its members for suit.

Soliciting subscriptions for sales of stock of corporation upon lawyer's letter-head.

Right of one law partner to participate in investments secured by another partner in the course of the partnership practice.

Continuation of firm name by one law partner after the dissolution of the partnership; the retiring partner consenting thereto and agreeing to refrain from practice in the locality where it is used.

Solicitation for a charitable fund by judge upon letter-head of his court.

The association for practice in New York of a New York lawyer with foreign lawyers not admitted as attorneys in New York but doing an international business and advising upon the laws of foreign countries.

Rights of lawyer who holds a check to the order of his client, who will not pay his lawyer's claims against him.

Rights of lawyer who holds money of a client who neglects or refuses to pay the lawyer's bill for other services.

Advertising in souvenir programs and in a foreign language.  
Right of lawyer to take security for his fee from his client.

Acceptance of employment against one who has consulted the lawyer about the same matter and received his advice therein under promise (subsequently broken) to employ him in case of litigation, and who boasts that the consultation and promise were a trick to prevent the opposition from employing the lawyer and the lawyer from accepting the employment.

Rights of a law clerk who has been defrauded by a lawyer who employed him, and who has failed to satisfy a judgment obtained against him for the fraud.

Use in an action for divorce of evidence of past adultery voluntarily furnished by the offending spouse.

Use of lawyers' name as counsel on stationery of a civic association.

Contract to induce an action to procure a divorce.

Solicitation through attorneys of the creditors of a bankrupt, of employment as counsel to collect concealed assets known to such counsel.

Advertising willingness and facilities for peculiar branch of professional employment in which the advertiser is peculiarly experienced.

Use by a lawyer of his photograph upon a business card.

Rights of lawyer under contract with a client to use endeavors to procure a purchase, which the client obtains on more favorable terms by direct negotiation with the vendor, when the lawyer holds funds of his client.

Method of announcing to clients and of signifying upon lawyers' office door the fact of employment by the lawyers of a foreign lawyer, not admitted to practice in New York, to advise upon foreign law.

Institution by a lawyer for the protection of his own rights of a suit against his client while continuing to represent him as attorney in other pending litigation.

Announcement by lawyer who deems himself peculiarly equipped by reason of former active engagement in mercantile business.

Anonymous announcement by trial counsel as lawyer seeking employment, emphasizing his aggressiveness, good address and appearance.

Announcement to clients and friends of the installation of a private telephone for those who do not wish to talk through the switchboard.

Acceptance of employment from an assignor for the benefit of creditors to defend a suit against him by an alleged creditor, while acting as counsel and attorney for the assignee for the benefit of creditors.

Purchase by attorney of the right of a former owner of real estate out of possession by reason of a judgment and sale in an action of which the court had no jurisdiction, with the intent to bring suit to enforce the right purchased.

Right of a lawyer to disclose to an international tribunal the contents of a brief on the law prepared by him for a client in co-operation with other lawyers for other clients, but never used for the purpose for which it was designed, when the clients of the other co-operating lawyers are interested in procuring from the tribunal other relief inconsistent with that advocated in the brief.

Right of a lawyer to partial compensation under a contingent fee agreement where there has been a partial recovery but his agreed services are unfurnished.

[Year Book, 1924, pp. 139-141.]

Payment by a law firm to the widow of a deceased member of a share of its profits earned after his death.

The organization of a firm for the general practice of law, composed of a New York lawyer, a lawyer of an other state and a lawyer of a Canadian province.

Argument of motions in court by clerks not admitted to practice.

Circulation by lawyer of notice of his opening of a special department with price list of services and discounts to special classes of persons.

Division of fees with forwarders of professional employment.

Acceptance of employment against former client.

Adoption of fee schedule by Bar Association.

Claim for division of lawyers' fees under new employment directly from the client by lawyer who originally introduced the client upon a former employment.

Lawyer's acceptance of employment from one client to sue another of his clients while his employment by the latter as a party in another suit continues.

Lawyer's desertion of a client's cause, after he has partly paid an agreed fee, because he fails to pay the balance; and where he fails to respond to any communication from his attorney.

Right and duty of attorney to pay a collection made by him to an attorney in fact of his client under a power of attorney executed prior to the collection.

Right and duty of attorney in respect to payment of money collected by him for a client when another attorney claims a right as against the client to a share of the collection, and the client disputes the claim.

Propriety of conduct of lawyer who advises a client in making his will, to circumvent the statutory prohibition of excessive bequests to charity, by bequeathing his property to the lawyer (but under a secret promise that the lawyer will devote the bequest to the desired charity).

Propriety of conduct of a lawyer, who in behalf of his client and to procure an advantage for the latter, delivers his own check in payment of a condition imposed by the court, but, after having thus obtained the advantage, stops payment of the check, and when sued thereon interposes a general denial, demands a bill of particulars and thus gains the personal advantage of a continuance over a summer vacation of the court.

Propriety of publishing a lawyers' list and charging lawyers for inserting their names therein as attorneys whose honesty and efficiency is guaranteed by the publisher; and propriety of lawyers' paying for such insertion.

Acceptance of employment by lawyer to advise a client as to the legality of plans to be used by him in his own dealings with his customers.

Receipt by lawyer of compensation from collection agency for professional services rendered by him to its patron.

Lawyer permitting or procuring foreign language newspaper to advise its readers to place their claims against certain bankrupts in his hands for prosecution and collection.

Acceptance of employment from both purchaser and seller of property to draw the contract of sale; and continuing to represent the seller while examining the title for the purchaser.

Whether in such examination the lawyer may assume the title to be good and marketable when it was acquired by the seller.

Insertion in a telephone directory of the letters LL.B. after the name of one who has received the degree of Bachelor of Laws, but is not admitted to practice law.

Acceptance by lawyer of employment from one person and at his expense to render professional services to a customer of the client, as a means of promoting the business interests of the client with his customer.

Solicitation by circular of employment of one lawyer by other lawyers.

Solicitation by circular of employment of lawyers to prosecute claims against the national government.

Written communications by one attorney with a judge, and without the knowledge of the adverse attorney, respecting a motion argued before the judge and held by him under advisement.

Letters of inquiry by lawyer to presidents of corporations designed to secure interviews with them so that he may disclose to them a plan of procedure for their benefit which will lead to his employment by them.

Card of lawyer announcing the association with him of experts in real estate, income tax and accountancy work.

Communication by lawyer, to taxing authorities, of his knowledge that one liable to tax has made no returns and paid no taxes, in order that the lawyer may be employed to enforce the collection.

Employment by a New York lawyer for services in New York of a lawyer of another state not admitted to practice in New York.

Professional association in New York for legal practice of the New York lawyer and the other lawyer last above mentioned.

Right and duty of a lawyer who has procured a decree of divorce for a client when he afterwards learns that the client boasts that it was procured upon perjured testimony secured by his client, but without the lawyer's knowledge of its falsity.

Propriety of the retention by a lawyer from a collection made by him of the amount of his claim for services disputed by his client.

Propriety of letter-head announcing association of lawyer and certified public accountant as tax specialists.

Partnership between lawyer and certified public accountant for sole purpose of practising before Internal Revenue Bureau, both being registered by such practice.

Solicitation by circular letter, and also of particular clients, of employment to assist in preparation of income tax return.

Solicitation of employment from attorneys to collect unsatisfied judgments obtained by them for their clients.

Engagement by practising lawyer in mercantile business as well.

Issuance of execution by attorney, whose client is adequately secured, on judgment secured by default through oversight of debtor's attorney.

Propriety of a law student, not admitted to practice, but employed as a clerk in a law office, handling legal matters for his own account and upon his own responsibility.

Propriety of a judge sitting in judgment in a case before him in which his former partner is attorney.

Duty of lawyer to his adversary when there are facts in the former relations of the lawyer and the trial judge, which would reasonably lead to the suspicion that the judge is biased; his duty to his adversary and to the judge, if the latter is not aware of the facts, which might disqualify him, or might reasonably lead to the above-mentioned suspicion; the duty of the judge upon learning the facts, after argument; the duty of the lawyer to his adversary who is all the while ignorant of the suspicious or disqualifying facts.

Rights and duties of lawyer for indemnity company who appears for its insured, when the interests of the insured and his indemnitor conflict.

Right and duty of lawyer regularly employed by a client upon an agreed salary, when he receives from another lawyer a part of his fee for professional services to the client.

Threats by a lawyer for one party to a pending action to a prospective witness (prior to a trial) that if he testifies to certain facts, it will disclose a right of action against him in favor of such party, as well as the commission of a crime by the witness.

Establishment of a residence in New York by a lawyer of another state, for the purpose of applying for admission to the New York Bar, though his wife and children continue to reside in the other state.

Right of lawyer to disclose his advice given to his client, when his client falsely charges him in legal proceedings with having given other advice to the detriment of the client.

Acceptance of employment by lawyer from a corporation to render professional services at its expense to its members and customers.

Acceptance by one lawyer of share of another lawyer's fees for professional services for having recommended the latter to the client.

Acceptance of employment as general counsel for a corporation, while continuing to act as attorney in an action against it as defendant.

Rights and duty of attorney when offered such employment under such circumstances.

Acceptance by a lawyer of employment as general counsel of a corporation after having instituted a stockholder's action, in which it is named as a defendant, and while such action is pending.

Rights and duties of such lawyer under such circumstances.

Rights and duties of such lawyer, if such employment by the corporation is offered to him after the termination of the stockholders' suit.

[Year Book, 1925, pp. 142-144.]

The right of foreign lawyers to maintain professional offices in the City of New York.

Acceptance from a bankrupt, by the attorneys for a Committee of Creditors, of compensation for their professional services.

Partnerships between domestic and foreign lawyers; division of fees for professional services by lawyer who renders them, with another lawyer who recommends his employment.

Purchase by an attorney of judgments against his former partner in order to offset them against claims for a division of fees.

Acceptance by attorney of employment from one spouse in a separation suit against the other spouse, while he continues attorney of record for both of the spouses in a pending litigation against a third person.

Employment by a lawyer, of a layman as manager of his collection department, upon compensation to be measured by a percentage of the lawyer's net receipts from the department.

Notifying client's debtor that a lawyer will bring an action in behalf of the client if the demand is not paid.

Withholding by one partner of money paid to him but owing to the other under an attorney's lien upon a recovery, in order to apply the same on a judgment against the latter purchased by the former; and counterclaiming for the balance of the judgment in proceedings to compel payment of the amount withheld.

Duty of attorney of record in litigation when his client disappears, answers no communications from the attorney, and affords him no information or assistance to enable him to defend.

Acceptance of employment to defend an action brought by one for whom the lawyer is the attorney of record in another pending action; the two actions being in no wise related; where the attorney in the pending action is a necessary witness for his client and has notified him that for that reason he must employ other trial counsel; and where the other person who seeks to employ him is likely to be in default, if he does not accept the employment.

Acceptance of employment as a lawyer from a corporation which proposes to furnish his services to its subscribing members. Acceptance by lawyer of employment to attach funds entrusted to him by another client.

Acceptance of employment in one litigation which may jeopardize the rights of another client in another litigation.

Acceptance of employment from a corporation which may or may not be violating Sec. 280 of the Penal Law (in respect to unlawful relations of a corporation to the practice of law).

Becoming director and officer of such corporation.

Rendering gratuitous services in answering through a newspaper questions respecting legal rights of the inquirers.

Incorporating a collection agency, and owning all of its stock, where the agency solicits business by advertisement and other-

wise, and employs the owner (a lawyer) as attorney for its customers to institute suits for them, his name appearing on its stationery and advertising matter as its counsel.

Effect of omitting his name from stationery and advertising.

Letterhead of one not admitted to practice law in the courts of New York, indicating that he practices exclusively in the United States Circuit Court of Appeals to which he is admitted.

Agreement to settle a civil claim with attorneys' fees added while a complaint of petty larceny is pending because of the facts constituting the basis of the civil claim.

Agreement between the spouses in a divorce suit for the support of a child; agreement between them upon the form of a proposed pleading in the suit; advising an absent spouse to go to an adjoining state where the suit is to be brought by the other, in order to be within its jurisdiction to accept service of process.

Employment by a corporation to render legal services to its members, itself and its customers.

Advertising a lawyer's real estate business and soliciting therefor.

Stipulation with an offending husband to reduce the amount of alimony *pendente lite* in a pending suit for separation, in consideration of his furnishing the names of witnesses who will give evidence of his adultery, to enable the wife to bring a suit for divorce against him.

Advertisements of American lawyers, resident abroad, in European papers though they are not members of the Bar there.

Advertising a lawyer's professional skill.

Compensating a law clerk for business brought by him to the law firm which employs him.

Data respecting a wife's resources to be submitted to a court on application for alimony and counsel fees.

Division of lawyer's fees with another lawyer for recommending his employment.

Division of fees between lawyers for administratrix and lawyer for heirs at law in a litigation where their clients have independent interests involving identical questions of law.

Advertising among lawyers, a lawyer's purpose to specialize in the trial of cases.

Accepting employment and compensation from a public service corporation to represent the parent of an injured infant in securing the approval of a court to a settlement of the infant's claim for damages against the corporation.

Duty of lawyer who collects on execution the amount of a judgment and then finds that the debt had been paid to his client before the entry of judgment.

Right of a lawyer to receive from the mother of a client, under a contract of employment in a divorce suit, an agreed amount in excess however, of the amount allowed by the court to his client for a counsel fee, to be paid by her husband.

Loan by an attorney to his distressed client and subsequent withholding by him of its amount from funds collected by him in settlement of the client's claim, though a note given for the loan is made payable to another.

Lawyer's relief of a distressed and injured client by making him a loan and by employing and compensating him for services and furnishing him with an artificial member while prosecuting in his behalf an action for damages against the person who caused his injury, and in order to avoid the necessity for his acceptance of an inadequate and therefore unjust offer of settlement.

Amount of proper fee for specified services where lawyer and client disagreed.



V.

EXTRACTS FROM DECISIONS OF THE GENERAL COUNCIL  
OF THE BAR, ENGLAND.

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## V.

### EXTRACTS FROM DECISIONS OF THE GENERAL COUNCIL OF THE BAR, ENGLAND.

(The Annual Practice, 1918, pp. 2393-2420; 1917, pp. 2406-2434.)

The most of the decisions of the Council concern the peculiar etiquette imposed upon barristers. The following extracts relate to professional conduct, and involve the application of principles not perhaps peculiar to the etiquette of barristers. The "Annual Practice" appears to have discontinued the publication of these decisions since 1918.

#### (1917.) P. 2406. THE GENERAL COUNCIL OF THE BAR.

The Council is the accredited representative of the Bar, and its duty is to deal with all matters affecting the profession, and to take such action thereon as may be deemed expedient.

#### Pp. 2406-7. ADVERTISING.

*Advertising By.*—The attention of the Council has been called to certain advertisements contained in a Legal Directory published in America in which the names of members of the English Bar, together with their London addresses, were set out, and which appeared to the Council to constitute an infringement of the rule of Professional Etiquette that an English Barrister should not advertise. The Council accordingly placed themselves in communication with the gentlemen concerned, and were glad to be assured by them that the advertisements had been inserted without their knowledge, and that they had taken immediate steps to suppress the advertisements. An. St. 1905-6, p. 13.

*Advertising. Annual Payment.*—A Barrister and advocate of the N. W. Territories, Canada, asked whether he could, without breaking any law of etiquette: (a) Advertise in one of the Canadian North-Western journals that he is now prepared to represent in London any Canadian from the North-West Territories, either as an advocate of N. W. T. (which includes power to act as Commissioner for Oaths) or as representative in the English Courts? (b) He has the offer to be the paid adviser of a Universal Information Bureau on certain legal matters, but would only receive a certain salary for the year; however many cases he had to advise upon. He would not be instructed by a Solicitor, but by the secretary of the company. The Council were of opinion (a) that to advertise as suggested would be in contravention of the rule of professional etiquette, that an English Barrister should not advertise; and (b) that the case is covered by the previous pronouncement of the Council as to Counsel acting for or advising clients without the intervention of a Solicitor (see Annual Statement, 1896-7, p. 11, and (nn.) "Acting without intervention of a Solicitor," *infra*, p. 2409), and that it would be a breach of professional etiquette for an English

Barrister to advise in consideration of an annual payment and without the intervention of a Solicitor. An. St. 1906-7, II., p. 11.

*Advertising for Pupils.*—A Barrister proposed to insert an advertisement for pupils (for Bar examination) in the legal papers, and to send circulars to members of the Inns of Court. Neither the advertisement nor the circular disclosed the name of the Barrister, or the address of his chambers. The Council ruled that there was no objection to this. An. St. 1912, p. 14.

P. 2413. *Barrister and Foreign Lawyer.*—It is contrary to etiquette for an English Barrister to allow a foreign Lawyer to have a seat in his chambers or to have his name on the door, unless the foreign Lawyer is subject to rules of etiquette similar to those of the English Bar. An. St. 1909, p. 11.

Pp. 2413-14. *Business, Barrister Engaging In.*—A practising Barrister should not as a general rule carry on any other profession or business, or be an active partner in or a salaried official or servant in connection with any such profession or business. There are undoubtedly exceptions to this general rule. Financial business is not an exception to the general rule. A practising Barrister should not actively associate himself with the carrying on of a financial business (*e. g.*, the issuing of Government loans) for a salary or for other payments varying with the amount of financial business done. There is no objection to a practising Barrister acting as an ordinary director (*i. e.*, not a managing director) of companies of good standing, carrying on a business which is free from anything of a derogatory nature. There is a great difference between the usual work of ordinary directors in the privacy of a board-room and the active carrying on or management of a business. On the other hand there are grave objections to a practising Barrister taking part in negotiations and arrangements with financial houses and visiting other persons, firms or companies, as the representative of any financial house. Such conduct on the part of a practising Barrister would not accord with the principles which should regulate the conduct of a practising Barrister in relation to his profession as such, and would clearly be contrary to professional etiquette. An. St. 1914, p. 19.

P. 2414. *Commissions or Presents from Barristers.*—Any Barrister who gave any commission or present to any one introducing business to him would be guilty of most unprofessional conduct, which would, if detected, imperil his position as a Barrister. An. St. 1899-1900, p. 6.

P. 2414. *Damages.*—Mentioning in Court Amount Claimed.—There is a general understanding that it is irregular for Plaintiffs' Counsel to mention during the trial the amount claimed by way of damages. An. St. 1898-1899, p. 11.

P. 2414. *New Trial.*—Mentioning previous Trial to the Jury.—The Council reported that they had consulted several of His Majesty's Judges and leading members of the Bar on the above point, and it appeared that there was no definite rule on the subject. So far as the Council could ascertain, the preponderance of opinion appeared to be that it is not usual for counsel in opening his case to mention to a jury the fact that the action had been previously tried, but that to do so would not constitute a breach of professional etiquette unless done for the purpose of prejudicing the opposite party to the action. The Council do not think that there is anything improper in the conduct of counsel in merely letting the jury know (without mentioning the result) that the matter had previously been before the Court. An. St. 1910, p. 12.

Pp. 2415-6. *Stamps.*—It is undesirable that Counsel should object to the admissibility to any document upon the ground that it is not, or is insufficiently, stamped, unless such defect goes to the validity of such document.

It is also undesirable that Counsel should take part in any discussion that may arise in support of any objection taken on the ground aforesaid unless invited to do so by the Court. An. St. 1901-1902, p. 5.

P. 2416. *Withdrawal from Case by Counsel*.—The Council have had under their consideration the following circumstances:—A Judge of the Circuit Court in W. Africa tried a case where prisoners were defended by a Barrister-at-Law, a member (native) of the Local Bar. The Barrister took exception to the Judge's ruling out some evidence, which he considered irrelevant, but which the Barrister wished to put in. After the adjournment the Barrister informed the Judge that with the consent of his clients he would withdraw from the case, stating as his reason for so doing the fact of the Judge ruling out his evidence. On questioning the prisoners the Judge found that they had not consented to the withdrawal, and they protested that they desired the Barrister to continue to represent them, as they had already paid for his services. The Judge wished to know if he could have compelled the Barrister to continue in the case. The Council replied that they knew of no power to compel the Barrister to proceed with the case under the circumstances mentioned, but that if a member of the English Bar had acted as described, the matter would be a proper one to bring to the notice of the Masters of the Bench of the Inn of Court of which he is a Member. An. St. 1907-8, p. 10.

#### P. 2416. NEWSPAPERS AND PERIODICALS.

*Answers to Legal Questions in Newspapers and Periodicals*.—It is contrary to professional etiquette for a Barrister to answer legal questions in newspapers or periodicals, whether for a salary or at ordinary literary remuneration, (1) where his name is directly or indirectly disclosed or liable to be disclosed, or (2) where the questions answered have reference to concrete cases which have actually arisen or are likely to arise for practical decision. An. St. 1908-9, p. 23.

*Names of Counsel Giving Opinions. Publication of*.—The practice of certain newspapers publishing the names of Counsel in connection with opinions printed in their columns has been altered to meet the wishes of the Council. An. St. 1896-97, p. 9.

*Photographs in Legal Newspapers*.—It is undesirable for Members of the Bar to furnish signed photographs of themselves for publication in legal newspapers. An. St. 1900-1901, p. 8.

*Reports of Companies*.—A Barrister should not permit his name to be printed in the reports of limited companies, which are annually forwarded to the shareholders and which describe him as legal adviser to the company. An. St. 1909, p. 8.

*Signed Articles*.—It is not a breach of professional etiquette for a Barrister to write for a technical journal a series of signed articles dealing with legal questions which have a general interest for the profession amongst whose members the journal circulates, provided that such articles do not deal with concrete cases which have actually arisen, or are likely to arise, for practical decision. In such signed articles the writer may describe himself as "barrister-at-law," and if he is the author of a text-book dealing with his subject, may also describe himself as such. This applies to articles, whether signed at the foot or not, which are headed with the name of the writer. An. St. 1915, p. 17.

P. 2417. *Dealings between (Barrister and Solicitor) as to Sharing Costs or Profits*.—Any dealings between Members of the Bar and Solicitor, as regards sharing costs or profits in any shape, are incompatible with the discipline of the Bar. Consolidated Regulations of the Four Inns, Jan. 1907, Regulation 15.

P. 2417. *Barrister Retaining Possession of Brief.*—Speaking generally, where a Barrister withdraws from a case and “returns his brief” it is his duty actually to hand the brief back to the Solicitor from whom he received it, and he is not justified without the consent of the Solicitor in retaining possession of the brief with a view to its production to the Law Society upon the occasion of a threatened or contemplated inquiry into the circumstances attending the preparation of the brief and the delivery thereof to him by the Solicitor. An. St. 1914, p. 22.

#### P. 2417. FEES.

*Agreement to Wait for Fees Until Received by Solicitor.*—It is a breach of professional etiquette for Counsel to whom a brief has been delivered by a Solicitor to agree with that Solicitor that he, Counsel, will wait for payment of the fees payable on that brief until that Solicitor shall have received them from his lay client. An. St. 1906-7, p. 12.

*Agreement to Take Fixed Fee for All Cases.*—It is a breach of professional etiquette to make an agreement with a Solicitor to do all his cases of a particular class at a fixed fee in each case, irrespective of the amount claimed or of the circumstances of each case. An. St. 1906-7, p. 12.

P. 2418. *Counsel's Fees, Non-Payment of.*—Although the Council should not act as a debt-collecting body for Members of the Bar, yet from time to time cases arise in which Counsel are not paid their fees under circumstances that make it the interest of the whole Profession that the defaulting clients should be exposed and punished, and in such cases assistance might properly be given to Members of the Bar in taking proceedings before the Statutory Committee of the Law Society. The Council think that it should be left to the Executive Committee to apply the principles above stated to the circumstances of particular cases, and, on any application being made to them by a Member of the Bar for assistance, to report to the Council whether such assistance should be rendered or not, and in what form. An. St. 1899-1900, p. 11; 1908-9, p. 24. An instance of such assistance being rendered is given An. St. 1901-1902, p. 13.

P. 2418. *Fees to Barristers' Clerks.*—The clerk of Mr. A. informed the clerk of Mr. B. that the latter (Mr. B.) had received a certain brief on circuit because he had recommended the solicitor to send it to Mr. B. (as was the fact), and suggested that Mr. B. should give him the clerk's fees which he would have received on it had Mr. A. been on the circuit, and so able to accept the brief. Mr. B., considering that such a practice might lead to serious abuses if it were countenanced, requested a pronouncement of the Council on the matter. The Council expressed the opinion that the practice referred to is absolutely improper. An. St. 1904-1905, p. 11.

P. 2419. *Conference. Minimum Fee. Specialist.*—A junior Barrister having special knowledge of Income Tax law requested the opinion of the Council upon the following questions:—

(1) Whether he was bound to grant a conference for the usual fee of one guinea where no papers were delivered, but where his unconsidered opinion was desired either (a) upon some question of importance; or (b) upon a series of questions formulated in advance of the conference by the Solicitor; upon which question or series of questions as the case might be a Barrister not having special knowledge of the subject might reasonably expect papers to be delivered marked with a proper fee for a considered opinion?

(2) If not so bound, whether, if he did grant a conference, there was any rule of the profession which prevented his clerk from charging a special fee (say three guineas) for such conference? An. St. 1910, p. 11.

P. 2419. *Return of Fee.*—Where a Barrister accepts a brief upon an express undertaking that he will personally attend throughout the case, he ought, if he does not so attend, to return his fee. An. St. 1898-1899, p. 9. See also (n.) "Circuit Retainers," p. 2429.

P. 2419. *Signing for Fees before Payment.*—The signing of Lists of Fees for Taxation without having received the money is improper, and a breach of professional etiquette. An. St. 1901-1902, p. 6. A Barrister should not sign a voucher and agree to hold over the solicitor's cheque until the solicitor should be able to obtain the costs from his client or the other side. An. St. 1912, p. 10.

See also "King's Counsel," p. 2424; "Special Fees," *infra*, etc., "Retainers," p. 2426.

P. 2428. *Counsel as Witness.*—A Barrister should not accept a retainer in a case in which he has reason to believe he will be a witness, and if being engaged in a case it becomes apparent that he is a witness on a material question of fact he ought not to continue to appear as counsel if he can retire without jeopardising his client's interests. An. St. 1911, p. 11. Nor should counsel accept a brief before an appellate tribunal when he has been a witness in the Court below. An. St. 1912, p. 11.

P. 2431. XXI. *Previous Employment.*—No Counsel can be required to accept a retainer or brief or to advise or draw pleadings in any case where he has previously advised another party on or in connection with the case, and he ought not to do so in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by the other party, or in which his acceptance of a retainer or brief or instructions to draw pleadings or advise would be inconsistent with the obligation of any retainer held by him, and in any such case it is the duty of the Counsel to refuse to accept such retainer or brief, or to advise or to draw pleadings, and in case he has received such retainer or brief inadvertently, to return the same. See r. 11 (n.).

The spirit of this rule is to be observed rather than the letter, and where Counsel is aware that confidence has been reposed in him by someone not his client, but who has been assisting his client with information, he should not afterwards act against that person in any matter in which such information would be material. An. St. 1896-1897, p. 8.

The rule is applicable even in cases where rule 20 does not apply, e. g., rating appeals. An. St. 1909, pp. 11, 12.

Pp. 2433-2434. *Defending Prisoners after Confession of Guilt.*—The Council were asked to advise on the propriety of Counsel defending on a plea of "Not Guilty" a prisoner charged with an offence, capital or otherwise, when the latter has confessed to Counsel himself the fact that he did commit the offence charged. The questions raised were (1) What is the duty of Counsel under the circumstances? may he, according to modern views defend in such case, and if so ought he to do so? (2) Does the same answer apply where he has already appeared in Court for the prisoner?

The Council adopted the following report, (An. St. 1915, p. 14);—

"Different considerations apply to cases in which the confession has been made before the advocate has undertaken the defence and to those in which the confession is made subsequently during the course of the proceedings.

"If the confession has been made before the proceedings have been commenced, it is most undesirable that an advocate to whom the confession has been made should undertake the defence, as he would most certainly be seriously embarrassed in the conduct of the case, and no harm can be done to the accused by requesting him to retain another advocate.

"Other considerations apply in cases in which the confession has been made during the proceedings, or in such circumstances that the advocate retained for the defence cannot retire from the case without seriously compromising the position of the accused.

"In considering the duty of an advocate retained to defend a person charged with an offence who in the circumstances mentioned in the last preceding paragraph confesses to Counsel himself that he did commit the offence charged, it is essential to bear the following points clearly in mind:—(1) that every punishable crime is a breach of the common or statute law committed by a person of sound mind and understanding; (2) that the issue in a criminal trial is always whether the accused is guilty of the offence charged, never whether he is innocent; (3) that the affirmative rests on the prosecution. Upon the clear appreciation of these points depends broadly the true conception of the duty of the advocate for the accused.

"His duty is to protect his client as far as possible from being convicted except by a competent tribunal and upon legal evidence sufficient to support a conviction for the offence with which he is charged.

"The ways in which this duty can be successfully performed with regard to the facts of a case are (a) by showing that the accused was irresponsible at the time of the commission of the offence charged by reason of insanity or want of criminal capacity, or (b) by satisfying the tribunal that the evidence for the prosecution is unworthy of credence, or, even if believed, is insufficient to justify a conviction for the offence charged, or (c) by setting up in answer an affirmative case.

"If the duty of the advocate is correctly stated above, it follows that the mere fact that a person charged with a crime has in the circumstances above mentioned made such a confession to his counsel is no bar to that advocate appearing or continuing to appear in his defence, nor indeed does such a confession release the advocate from his imperative duty to do all he honourably can do for his client.

"But such a confession imposes very strict limitations on the conduct of the defence. An advocate may not assert that which he knows to be a lie. He may not connive at, much less attempt to substantiate, a fraud."

"While, therefore, it would be right to take any objection to the competency of the Court, to the form of the indictment, to the admissibility of any evidence, or to the sufficiency of the evidence admitted, it would be absolutely wrong to suggest that some other person had committed the offence charged, or to call any evidence which he must know to be false having regard to the confession such, for instance, as evidence in support of an alibi, which is intended to show that the accused could not have done or in fact had not done the act; that is to say, an advocate must not (whether by calling the accused or otherwise) set up an affirmative case inconsistent with the confession made to him.

"A more difficult question is within what limits, in the case supposed, may an advocate attack the evidence for the prosecution either by cross-examination or in his speech to the tribunal charged with the decision of the facts. No clearer rule can be laid down than this, that he is entitled to test the evidence given by each individual witness, and to argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged. Further than this he ought not to go.

"It must be clearly understood that this report is not intended as anything more than an answer to the specific question submitted. It is based on the assumption that the accused has made a clear confession that he did 'commit the offence charged,' and does not profess to deal with the very difficult questions which may present themselves to Counsel when a series of inconsistent statements are made to him by the accused before or during the proceedings, nor does it deal with the questions which may arise where statements are made by the accused which point almost irresistibly to the conclusion that the accused is guilty but do not amount to a clear confession. Statements of this kind must hamper the defence, but the questions arising on them are not dealt with here. They can only be answered after careful consideration of the actual circumstances of the particular case."

The above report was submitted to and approved by the then Attorney-General (Sir Edward Carson, K.M., M.P.) and by Sir Robert B. Finlay, K.C., M.P.



## VI.

### EXTRACTS FROM "LAW, PRACTICE AND USAGE IN THE SOLICITOR'S PROFESSION."

#### THE LAW SOCIETY (ENGLAND).

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## VI.

### EXTRACTS FROM LAW, PRACTICE AND USAGE IN THE SOLICITOR'S PROFESSION.

#### A SELECTION OF DECISIONS AND OPINIONS.\*

A SELECTION OF DECISIONS OF THE COURTS AFFECTING SOLICITORS, INCLUDING THOSE REPORTED TO THE END OF TRINITY SITTINGS, 1923.

##### I. RETAINER AND AUTHORITIES.

1. The court refused to restrain a defendant's solicitor from acting for him on the alleged ground that he had, in the character of solicitor for the defendant and others interested (jointly with the plaintiff) in a chancery suit, in attendance upon a master, obtained a knowledge of the plaintiff's case and of the evidence upon which it was to be supported, the defendant's solicitor deposing that he had not thereby obtained any further knowledge of the plaintiff's case than would be disclosed by a particular demand. *Grissell vs. Peto* (1832, C. P.), 2 M. & Scott 2; 9 Bing. 1; 1 L. J. C. P. 139.

2. When an attorney has been employed in a cause and is afterwards discharged by his client, not on the ground of misconduct, the court will not restrain him from acting for the opposite party, unless it clearly and distinctly appears that he has obtained information in his former character which, if communicated to the other side, would be prejudicial to the cause of his former client. *Johnson vs. Marriott* (1833, Ex.), 2 Cr. & M. 183; 4 Tyr 78; 2 D. P. C. 343; 3 L. J. Ex. 40.

20. An agreement between a client and a solicitor that the solicitor shall be paid a fixed yearly salary, to be clear of all expenses of his office, and to include all emoluments, he paying to the client any surplus which may arise of receipts over payments, is not opposed to the provisions of the Attorneys and Solicitors Acts, nor to the policy of the law, where it is also

\* The Law Society, Chancery Lane, London, 1923.

a term of the agreement that the solicitor is not to transact professional business for any other client. When the client is ordered to be paid costs, the bill is to be taxed in the ordinary way, and the certified amount is to go in relief of the salary engaged to be paid, and the surplus, if any, is to be carried over. *Galloway vs. Corporation of London* (1867, Wood, V. C.), L. R. 4 Eq. 90; 36 L. J. Ch. 978; 16 L. T. 407; 15 W. R. 1032.

22. The court will not exercise its summary jurisdiction over an attorney simply because he has, from improper motives, given information which might be used against a former client. There must be actual misconduct *qua* attorney, by the adverse use of information, while the relation of attorney and client is still subsisting, or by the betrayal of secrets relating to the client's business obtained by the attorney while acting in a confidential capacity and acquired also in consequence of his so acting. The test for determining whether the court has or has not jurisdiction is, whether, if the attorney had been called as a witness, the court would or would not have held him justified in refusing to answer on the ground of privilege. *Cutts, In re*; *Ibbetson, Ex parte* (1867, Q. B.), 16 L. T. 715.

29. A solicitor had a retainer to act generally for a company, and also a special retainer to conduct a chancery suit on behalf of the company. Being employed by another client to go to America, he took the opportunity of collecting information on behalf of the company in furtherance of their suit, but without special instructions from the company to do so. His other business took him to the place where most of this information was obtained. On his return to England he reported to the company what he had done, and they made use of the information he had obtained. He afterwards took three journeys to Paris to conduct negotiations for a compromise of the same suit without instructions from the company, but with the knowledge of some of the directors, and on two of the journeys he was accompanied by the chairman. *Held* that under the special circumstances of the case the solicitor was entitled to charge the company for his professional services in America as being within his retainer, and also for his professional services and expenses on his journeys to Paris, since, although the journeys had been taken without instructions, the directors had adopted and acted on what he

had done. Snell, *In re.* (1877, C. A.), 5 Ch. D. 815; 36 L. T. 534; 25 W. R. 736.

30. Notwithstanding the rule that a solicitor must not use information acquired in his professional capacity in any subsequent proceedings against his former client, a solicitor who has acted in the formation of a company and been discharged may act for a petitioner to wind up the same company, when all the facts upon which the petition is based might have been ascertained by any person in the position of the petitioner. Holmes, *In re*; Electric Power Co., *In re* (1877, Hall, V. C.), 25 W. R. 603.

36. A solicitor who had acted for a company on several occasions was retained by one of the directors to act for him in an action against the company. Subsequently the director discharged the solicitor, who was then retained by the company to act for them in another action flowing out of the original one, and brought against them by the same director. The director sought an injunction to restrain the company from employing the solicitor professionally, and to restrain the solicitor from acting for them. Hall, V. C., granted the injunction, but on the solicitor undertaking not to communicate to the company anything which had come to his knowledge as solicitor for the director, the Court of Appeal discharged the order. Little *vs.* Kingswood Collieries Co. (1882, C. A.), 20 Ch. D. 733; 53 L. J. Ch. 56; 47 L. T. 323; 31 W. R. 178.

NOTE.—See *Rakusen v. Ellis Munday and Clarke* (75).

40. A solicitor retained by three clients jointly declined to continue to act for one of them. There had been no confidential communications between that client and the solicitor. Held that he could not be restrained from acting for the other clients. Flint, *In re*; Coppock *vs.* Vaughan (1885, Chitty, J.). 79 Law Times, 266; 29 S. J. 651; (1885), W. N. 163.

50. The contract of a solicitor who accepts a retainer in a common law action is, in the absence of agreement to the contrary, an entire contract to conduct the case of the client until the action is concluded, and he is not entitled on reasonable notice only and without good cause to put an end to the contract. The failure of the client on request to find money for necessary

disbursements justifies the solicitor in putting an end to the contract on reasonable notice and suing for his costs already incurred. It is a question whether on the death or incapacity of the solicitor there is any right of action. *Underwood, Son & Piper vs. Lewis* (1894, C. A.), (1894), 2 Q. B. 306; 64 L. J. Q. B. 60; 9 R. 440; 70 L. T. 833; 42 W. R. 517; 10 T. L. R. 465.

75. The basis of the jurisdiction to restrain a solicitor who was at one time acting for a party in litigation from subsequently acting for the opposite side is the duty not to communicate confidential information and, where there is no danger of a breach of such duty being committed, a firm of solicitors will not be restrained from acting for parties opposed to their original client. *Rakusen vs. Ellis Munday and Clarke* (1912, C. A.), (1912), 1 Ch. 831; 81 L. J. Ch. 409; 106 L. T. 556; 28 T. L. R. 326.

78. The authority of a plaintiff's solicitors to bring an action cannot be raised upon pleadings and made an issue at the trial. Such authority can only be questioned in an application to stay the proceedings on the ground of want of authority. *Richmond vs. Branson & Son* (1914, Warrington, J.), (1914), 1 Ch. 968; 83 L. J. Ch. 749; 110 L. T. 763; 58 S. J. 455.

82. A solicitor ordering goods on behalf of a client in connection with litigation is not personally liable for the price; no custom imposing personal liability on the solicitor in such cases has been proved. *Wakefield vs. Duckworth & Co.* (1914, Lord Coleridge, J. and Shearman, J.), (1915), 1 K. B. 218; 84 L. J. K. B. 335; 112 L. T. 130; 31 T. L. R. 40; 59 S. J. 91.

85. A solicitor was retained to conduct an action on the ordinary terms but subsequently entered into a champertous agreement as to costs. *Held* that he could not recover on the original retainer as it had been varied by an illegal agreement. *Wild vs. Simpson* (1919, C. A.), (1919), 2 K. B. 544; 88 L. J. K. B. 1085; 121 L. T. 326; 35 T. L. R. 576; 63 S. J. 625.

#### V. DUTIES AND PRIVILEGES.

285. If an attorney pays into his bankers' hands money of his client, mixing it with his own, and the bankers fail, the

attorney is liable to make good the loss. *Robinson vs. Ward* (1825, Abbott, C. J.), 2 C. & P. 59; *Ry and M.* 274.

286. An attorney who had undertaken a cause is not bound to proceed without adequate advances from time to time by his client for expenses out of pocket, and therefore the court will not compel an attorney, even after notice of trial, to carry the cause into court, unless the client supplies him with sufficient funds to pay the expenses out of pocket thereby incurred. *Wadsworth vs. Marshall* (1832, Ex.), 2 Cr. & J. 665; 1 L. J. Ex. 250.

287. Communications made to, or received by, a solicitor in the conduct of professional business for a client are privileged from disclosure at the instance of a third party. *Greenough vs. Gaskell* (1833, Broughman, L. C.), 1 Myl. & K. 98; *Coop. t. Brough.* 96.

288. The court will not interfere summarily to try the question of negligence on the part of an attorney towards his client. *Brazier vs. Bryant* (1834, Patteson, J.), 2 Dowl. 600.

289. If attorneys employed by a vendor to settle on his part the assignment of a term allow him to execute an unusual covenant without explaining the liability thereby incurred, they are responsible to him for consequent loss, notwithstanding he is himself at the time of the assignment aware of the fact in respect of which he afterwards incurs liability on his covenant. *Stannard vs. Ullithorne* (1834, C. P.), 10 Bing. 491; 4 M. & Scott 359; 3 L. J. C. P. 307.

290. Title-deeds were entrusted to an attorney by his clients, who wished to raise a loan on mortgage of the property comprised in them. The attorney disclosed a defect which he discovered in the title to another of his clients, who was likely to be benefited by the disclosure. *Held* that the attorney was guilty of a breach of duty to the client who had entrusted him with the deeds. *Taylor vs. Blacklow* (1836, C. P.), 3 Bing. N. C. 235; 3 Scott 614; 2 Hodges 224; 6 L. J. C. P. 14.

291. If an attorney who is conducting a cause does not communicate to his client an offer of compromise made by the other party, but goes on with the action in order to put costs into his own pocket, he cannot charge his client with the costs incurred; but as it is the duty of an attorney to communicate such an offer to his client, it must be presumed that he did so till

the contrary is shown. *Sill vs. Thomas* (1839, Patterson, J.), 8 C. & P. 762.

294. On payment of a solicitor's bill the client is entitled to the possession of letters written to the solicitor by third parties, but not to copies of letters written by the solicitor to third parties unless they are paid for by the client. *Thomson, In re* (1855, Romilly, M. R.), 20 Beav. 545; 24 L. J. Ch. 599; 3 W. R. 474; 1 Jur. (N. S.) 718.

295. A solicitor having an authority in writing to sell property on behalf of one client entered into a contract for the sale of it to another client. The solicitor did not communicate the purchaser's name to the vendor, nor the fact that the purchaser was a client of the solicitor. In an action for specific performance by the purchaser against the vendor, *Held* that a solicitor acting for opposing parties should disclose to them both the whole nature of the dealing, and that such disclosure not having been made the court would not pronounce a decree for specific performance of the contract. *Hesse vs. Briant* (1856, Cranworth, L. C.), 6 De G. M. & G. 623; 28 L. T. (O. S.) 297; 5 W. R. 108.

299. The *dictum* in *Greenough vs. Gaskell* (287) does not apply to information obtained from a third party by a solicitor while acting professionally for a client. Such information is not privileged from disclosure. *Ford vs. Tennant* (1863, Romilly, M. R.), 32 Beav. 162; 32 L. J. Ch. 465; 7 L. T. 733; 11 W. R. 324; 9 Jur. (N. S.) 292.

301. No solicitor is at liberty, in consequence of any privilege of his client, to conceal any fact which will enable the court to discover the residence of its ward. *Ramsbotham vs. Senior* (1869, Malins, V. C.), L. R. 8 Eq. 575; 21 L. T. 293; 17 W. R. 1057.

302. A witness who was being examined under the Bankruptcy Act, 1861, was asked where the bankrupt's father was residing. The witness, who was the father's solicitor, declined to answer, and stated that "the place of residence of my said client came to my knowledge in my professional capacity, and in the course and in consequence of the professional employment in which I was engaged on his behalf, and in no other way." *Held* that the witness had not made a case for excusing himself

from answering on the ground of professional privilege. What a solicitor is privileged from disclosing is that which is communicated to him by his client for the purpose of obtaining his professional advice and assistance. The knowledge of the client's residence is usually a mere collateral fact, which the solicitor knows without anything like professional confidence. If, however, the client's residence was being concealed, if he was in hiding for some reason or other, and the solicitor had said "I only know my client's residence because he has communicated it to me confidentially, as his solicitor, for the purpose of being advised by me, and he has not communicated it to the rest of the world," then the client's residence would have been a matter of professional confidence. Campbell, *Ex parte*; Catheart, *In re* (1870, James, L. J.), L. R. 5 Ch. 703; 23 L. T. 289; 18 W. R. 1056.

305. The court will not, in the exercise of its jurisdiction over its own officers, make an order upon a solicitor compelling him to disclose the address of his client (a defendant) who has absconded, and whom the plaintiff seeks to serve with a *subpœna duces tecum*, to compel his appearance at the hearing with documents material to the plaintiff's case. Heath *vs.* Crealock (1873, Bacon, V. C.), L. R. 15 Eq. 257; 42 L. J. Ch. 455; 28 L. T. 101; 21 W. R. 380.

308. A solicitor is not bound to deliver to his client, on the termination of his retainer, letters addressed to him by his client, nor copies in his letter-book of his own letters to his client. Wheatcroft, *In re* (1877, Jessel, M. R.), 6 Ch. D. 97; 46 L. J. Ch. 669; 26 W. R. 69.

311. Communications between solicitor and client to which privilege once attaches are always privileged, whether they have been made with reference to the existing action or to a previous one. *A fortiori* they are privileged when the question in dispute is the same in the second action. Bullock *vs.* Corry (1878, Cockburn, C. J. & Mellor, J.), 3 Q. B. D. 356; 47 L. J. Q. B. 352; 38 L. T. 102; 26 W. R. 330.

312. A solicitor, who is employed to obtain the execution of a deed and who acts as one of the witnesses, is not precluded on the ground of breach of professional confidence from giving evidence, by which the deed may be proved invalid, as to what

passed at the time of execution. *Crawcour vs. Salter* (1881, C. A.), 18 Ch. D. 30; 45 L. T. 62.

316. No action will lie against an advocate for defamatory words spoken with reference to, and in the course of, an inquiry before a judicial tribunal, although they are uttered by the advocate maliciously and not with the object of supporting the case of his client, and are irrelevant to every issue of fact which is contested before the tribunal. The rule applies to a solicitor acting as advocate. *Munster vs. Lamb* (1883, C. A.), 11 Q. B. D. 588; 52 L. J. Q. B. 726; 49 L. T. 252; 32 W. R. 243; 47 J. P. 805.

318. All communications between a solicitor and his client are not privileged from disclosure, but only those passing between them in professional confidence and in the legitimate course of professional employment of the solicitor. The evidence of a solicitor whom a client had consulted for the purpose, as it afterwards proved, of being guided in the commission of a crime, was admitted on the trial of the client to prove what passed at the interview at which he had been consulted. *R. vs. Cox and Railton* (1884, C. C. R.) 14 Q. B. D. 153; 54 L. J. M. C. 41; 52 L. T. 25; 33 W. R. 396; 49 J. P. 374; 15 Cox C. C. 611.

320. In an action against a married woman judgment was given for the plaintiff and an inquiry was directed before a master as to her separate estate. On the defendant's marriage a settlement had been executed to the trustees, for whom the appellant was solicitor and, as such, was in possession of the deed. The appellant appeared before the master on a *supæna duces tecum* and was called upon to produce the deed, but refused to do so, or to give the names of the trustees, on the ground of privilege as a solicitor, although he admitted that he knew them. Held that, first, the appellant was bound to produce the deed, inasmuch as his clients could not have withheld it; secondly, he was bound to give the names of the trustees on the ground that, the privilege of the solicitor being the privilege of the client, the solicitor is bound to state the names of those for whom he claims the privilege, and on the further ground that the appellant's knowledge of the trustees might have been obtained otherwise than by means of confidential communications from his clients. *Bursill vs. Tanner* (1885, C. A.), 16 Q. B. D. 1; 55 L. J. Q. B. 53; 53 L. T. 445; 34 W. R. 35; 2 T. L. R. 9.

321. In an action for libel against solicitors the latter pleaded justification, of which they gave particulars. They were interrogated as to certain matters pleaded in justification, and claimed privilege on the ground that they had no personal knowledge of the matters referred to in the interrogatory and that their information and belief were founded on information procured by them as solicitors for certain clients for the purpose of litigation either pending or threatened between the plaintiff and such clients. It was argued that the solicitors, having in their pleading disclosed these confidential communications in part, were bound to do so more fully. *Held* that they were not bound to answer the interrogatory, the privilege claimed not being their privilege, but that of their clients. *Procter vs. Smiles* (1886, C. A.), 55 L. J. Q. B. 527; 2 T. R. 906.

322. An order was obtained by the solicitor for the plaintiff that a purchaser should pay his purchase-money into court, and that the money when paid in should be invested in consols. The money was paid into court by the purchaser, but the plaintiff's solicitor omitted to leave with the paymaster a request for its investment, and consequently the investment was not made. *Held* that the solicitor was responsible, not only to his client but to the court, for the due discharge of his duty, and that he must make good the loss of interest, subject to a set-off in his favor owing to the fact that the price of consols had fallen since the time when the investment ought to have been made. *Batten vs. Wedgwood Coal & Iron Co.* (1886, Pearson, J.), 31 Ch. D. 346; 55 L. J. Ch. 396; 54 L. T. 245; 34 W. R. 228.

323. After the commencement of an action in the probate division four anonymous letters relating to the matter in dispute were received, two by the plaintiff, one by her solicitor, and another by her counsel in the action. *Held* that the letters to the plaintiff must be produced, but that the letters to the solicitor and counsel were privileged, for they must be taken to have been sent to them for the purposes of the action and by reason of their being the plaintiff's legal advisers in the action, and the privilege was not lost because they were not sent in consequence of any request by the solicitor and counsel, nor obtained by their exertions. *Holloway, In re; Young vs. Holloway* (1887, C. A.), 12 P. D. 167; 56 L. J. P. 81; 57 L. T. 515; 35 W. R. 751; 3 T. L. R. 616.

329. At a private examination of the solicitor to a debtor, the solicitor was in effect asked when he was first employed by the debtor. *Held* that he could not decline to answer on the ground that he would disclose communications made to him for the purpose of obtaining his professional advice. Wells, *In re; The Trustee, Ex parte* (1892, Vaughan Williams, J.), 9 Mor. 116.

330. All the members of the Court of Appeal (Lindley, Lopes and Kay, L. JJ.) concurred in the view that, as there is no duty incumbent on a solicitor to keep a diary or day-book, entries made in such a book would not be admissible in evidence. Their lordships did not, however, express a concluded opinion on the question. *Hope vs. Hope* (1893, C. A.), 37 S. J. 242.

331. An action was brought against a solicitor for an alleged libel. The alleged libel was contained in a letter which the solicitor, acting for a client, wrote when the plaintiff's property was being put up for sale. The letter gave notice to the auctioneer that the plaintiff had committed an act of bankruptcy and warned him not to part with the proceeds of the sale. The solicitor was acting on behalf of a creditor of the plaintiff and was instructed by the creditor to see that the debt due to him was not put into jeopardy of being lost. *Held* that it was within the ordinary duty of a solicitor to see that nothing happened according to law which might make legal process futile, that the solicitor therefore was acting in the ordinary course of his duty as a solicitor in writing the letter, and that the publication of the alleged libel was privileged. *Baker vs. Carrick* (1894, C. A.), (1894), 1 Q. B. 838; 63 L. J. Q. B. 399; 70 L. T. 366; 42 W. R. 338; 58 J. P. 669.

332. In an action brought against a certain firm and their solicitors to recover damages for an alleged libel, it appeared that the firm alleged that a debt was due to them from the plaintiff, and instructed their solicitors to take steps to obtain payment of that debt. The solicitors wrote a letter to the plaintiff demanding payment of the alleged debt and making statements defamatory of the plaintiff. This letter was dictated by the solicitors to a shorthand clerk by whom it was transcribed, and it was then copied by another clerk into the letter-book. At the trial the jury found that the defendants honesty and *bona fide* believed in

the truth of the statements made in the letter. A verdict was found for the plaintiff with damages, and judgment was entered accordingly. The defendants applied for judgment, not asking for a new trial. *Held* that, if a solicitor in the discharge of his duty to and in the interests of his client dictates a defamatory letter to one clerk which is copied by another clerk, the publication to the clerks is upon a privileged occasion, because it is reasonably necessary and usual in the course of a solicitor's business. *Boxsius vs. Goblet Freres* (1894, C. A.), (1894), 1 Q. B. 842; 63 L. J. Q. B. 401; 70 L. T. 368; 42 W. R. 392; 10 T. L. R. 324; 58 J. P. 670.

333. In an action in which fraud was alleged against the defendants they claimed privilege for communications between themselves and their solicitor as to the subject-matter of the alleged fraud. *Held* that the communications were not privileged, there being no distinction in that respect between a crime and a civil fraud, and that it was immaterial whether the solicitor was or was not a party to the alleged fraud. *Williams vs. Quebrada Railway, Land & Copper Co.* (1895, Kekewich, J.), (1895), 2 Ch. 751; 65 L. J. Ch. 68; 73 L. T. 397; 44 W. R. 76.

334. Solicitors took instructions from one partner, acting within the scope of his authority, to defend an action against the firm. Judgment was given against the firm and execution was levied on the goods of another partner. The latter brought an action for negligence against the solicitors for not informing him of the judgment. *Held* that the solicitors' duty was to keep the partner who had instructed them informed of the proceedings in the action, and that they were not bound to inform the other partners. *Tomlinson vs. Broadsmith* (1896, C. A.), (1896), 1 Q. B. 386; 65 L. J. Q. B. 308; 74 L. T. 265; 44 W. R. 471; 12 T. L. R. 216.

335. Statements made to a solicitor who is professionally consulted *pro hac vice* are privileged, although there may be no regular retainer. *Rochefoucauld vs. Boustead* (1896, Kekewich, J.), 65 L. J. Ch. 794; 74 L. T. 783.

337. A solicitor places himself in a false position by acting for both donor and donee when the donor is a young person and the donee stands to the donor in a fiduciary relationship, for in such circumstances the donor's solicitor should be inde-

pendent of the donee in fact as well as in name. It is the duty of the donor's solicitor to protect the donor against himself, and unless satisfied that the transaction is a right and proper one in the donor's own interests, to advise the donor not to proceed with it, and, if the donor still persists, to decline to act for him. *Powell vs. Powell* (1899, Farwell, J.), (1900), 1 Ch. 243; 69 L. J. Ch. 164; 82 L. T. 84.

341. For a debtor's solicitor to disclose his client's address to the trustee in bankruptcy, when the debtor has expressly desired that his address shall not be divulged, would involve a violation of the professional confidence between solicitor and client. *Hore, In re* (1904, Bigham, J.), 2 L. S. G. 60; 39 *Law Journal*, 662.

342. Communications made by a witness in an action to the solicitor who takes his proof are equally privileged with his sworn evidence given in court. *Watson vs. McEwan; Watson vs. Jones* (1905, H. L.), (1905), A. C. 480; 74 L. J. P. C. 151; 93 L. J. 489.

343. In proceedings for libel at the Mansion House police court, it was alleged that the libel was contained in a recital in a certain deed, and that the publication consisted in the signature of the deed by the defendant and the delivery of it to his solicitor, who was an attesting witness. The solicitor had refused, on the ground of privilege, to produce the original deed, and the Lord Mayor had held that he was justified in doing so. As secondary evidence a copy of the deed was then put in. The solicitor still claimed privilege and declined to say whether he had witnessed the signature to the original, although the Lord Mayor held that by becoming an attesting witness he had abandoned his status as solicitor. A rule *nisi* for attachment against the solicitor was then granted. *Held*, after argument, that there was authority for deciding that the solicitor must answer the question whether he had attested or not. The proceedings were dropped on the solicitor's undertaking to answer. *R. vs. Payne; Wolff, Ex Parte* (1905, Alverstone, C. J., Kennedy & Ridley, JJ.), *The Times*, April 13, 1905, p. 3.

344. The parties interested under a will jointly consulted a solicitor and instructed him to obtain counsel's opinion on the matter, and subsequently they met at the office of the solicitor,

who read out and purported to explain the opinion to them. The solicitor then suggested a compromise and drew up an agreement embodying his suggestions, which was signed by all the parties. Afterwards, however, one of the legatees alleged that the solicitor had wrongly explained the effect of counsel's opinion and that she would not have signed the agreement had he not misinterpreted to her her exact legal position, and she refused to carry out the agreement. *Held* that the agreement was induced by the misrepresentation of the effect of counsel's opinion by the solicitor, and that the legatee was entitled to an order setting it aside. Generally speaking, a compromise entered into after jointly consulting the family solicitor, and probably made for the very purpose of avoiding litigation, will be supported by the court; but the family solicitor is not entitled to keep from his clients the full knowledge of their exact legal rights because he thinks that a compromise is for the advantage of all parties and that the chances of a compromise will be minimized by such knowledge. Roberts, *In re*; Roberts *vs.* Roberts (1905, C. A.), (1905), 1 Ch. 704; 74 L. J. Ch. 483; 93 L. T. 253.

345. A solicitor who has in his possession the will of a deceased testator must, when ordered under Sec. 26 of the Court of Probate Act 1857, lodge it in the registry, and can claim no privilege in the matter because the will has been handed to him by his client, for the will belongs to the court. Harvey, *In re* (1907, Gorell Barnes, P.), (1907), P. 239; 76 L. J. P. 61; 51 S. J. 357; 23 T. L. R. 433.

346. A client instructed a solicitor A to tax a bill of costs delivered to him by another solicitor B who had previously been acting for him professionally. On the hearing of the order for taxation B complained that it was vexatious to put him to the expense of taxation as the client was an undischarged bankrupt, who had no intention of paying the bill, but A denied the bankruptcy and said the bill would be paid, and the master accordingly made the order to tax. The client was in fact an undischarged bankrupt and he thereupon placed the full amount of B's bill in A's hands, and A wrote to B to inform him of this, adding: "so that on the completion of the taxation we shall be in a position to pay you the amount certified by the master due to you." Relying on this undertaking B took no steps to

enforce the order for taxation. The taxing master's certificate, which was dated almost a year after the date of A's letter, certified a balance of £82 10s. 7d. due to B, but A declined to pay the amount on the ground that all the money which the client had placed in his hands had been applied on the client's behalf or in discharge of his own costs against the client. A summons was thereupon taken out by B for a summary order for payment by A out of the money in his hands of the amount certified by the taxing master, in accordance with the terms of A's letter. *Held* that the statement contained in A's letter was a personal undertaking to pay B's taxed costs out of money placed in his hands for the purpose and that a personal undertaking in such a sense was sufficient to enable the court to exercise its summary jurisdiction. Even if A's letter did not amount to a personal undertaking it contained a declaration of trust upon which B had acted, and the court would exercise its summary jurisdiction to prevent such a breach of trust by its officer, although the relationship of solicitor and client did not exist, and whether or not a remedy by action existed or relief in equity could be obtained. Solicitor, *In re; Hales, Ex parte* (1907, Darling & Lawrence, J.J.), (1907), 2 K. B. 539; 76 L. J. K. B. 931; 97 L. T. 212; 23 T. L. R. 573.

351. A solicitor brought on behalf of a client an action against a bank under an agreement that the solicitor should receive 25 per cent of the amount recovered in lieu of costs. *Held* that the agreement was champertous and illegal, and that the bank were entitled to recover their costs in the action from the solicitor. Danzey *vs.* Metropolitan Bank of England and Wales (1912. Darling, J.), 28 T. L. R. 327.

354. It is the duty of both counsel and solicitors, if aware that the petitioner in divorce proceedings has himself committed adultery, to disclose such fact to the court. Abraham *vs.* Abraham and Harding (1919, Lord Coleridge, J.), 120 L. T. 672; 35 T. L. R. 371; 63 S. J. 411.

356. When parties agree together to take steps to obtain a divorce by suppressing or concealing facts from the court they are guilty of a criminal offence, and any solicitor who assists the parties is also guilty of a criminal offence. Kynaston *vs.* Hickman & Brown (1919, Lord Reading, L. C. J.), *Times* of Nov. 6, 1919.

357. A solicitor who receives from a client for purposes of his defence money alleged by the client's opponent to be trust money is under no obligation to preserve the money as trust money or to refuse to apply it in accordance with the client's directions. *Le Roche vs. Armstrong* (1922, Lush, J.), (1922), 1 K. B. 485; 91 L. J. K. B. 342; 126 L. T. 699; 38 T. L. R. 347; 66 S. J. 351.

358. It is the duty of counsel upon the hearing of an appeal in the House of Lords to bring to the notice of the House any authority of which he is aware bearing one way or another upon the matters under debate, irrespective of whether or not the particular authority assisted the party which was aware of it. It is also the duty of those instructing counsel, if they are aware of any such authority, to call the attention of counsel to it in order that counsel may bring it to the attention of the House. *Glebe Sugar Refining Co. Ltd. vs. Greenock Port & Harbor Trustees* (1921, H. L., Sc.), (1921), W. N. 85; 125 L. T. 578; 37 T. L. R. 436; 65 S. J. 551.

359. The solicitor of a wife against whom her husband has presented a divorce petition is not charged with the duty of deciding on the wife's guilt or innocence. He may also properly form the view that, whether the wife be guilty or not, the case against her must fail for lack of evidence. But he should not defend at the husband's cost where he is fully satisfied that the evidence against the wife is substantially conclusive. *Franklin vs. Franklin and Marshall* (1921, McCardie, J.), (1921), P. 407; 90 L. J. P. 306; 126 L. T. 110; 37 T. L. R. 894.

## VI. SOLICITOR-TRUSTEES.

372. A partner in a firm of country solicitors was one of two trustees of a will which contained no power to charge for professional services. He and his co-trustee were respondents to an application for maintenance under the summary procedure of the court, and his firm, through their London agents, acted as solicitors for the trustees and made profit costs. *Held* that his firm were entitled to receive those profit costs as coming within the exception laid down in *Cradock vs. Piper* (360). Although that case has been often disapproved, it has been so long acted on as a binding authority that it ought not now to be overruled.

The exception applies not only to proceedings in a hostile suit, but to friendly proceeding in chambers, such as an application for maintenance of an infant.

After the death of his co-trustee the solicitor was made defendant to an administration action in which a receiver was appointed, and his firm, through their London agents, acted for the receiver and made profit costs. *Held* that these profit costs could not be retained by the firm, on the principle that a trustee must not place himself in a position in which his interest conflicts with his duty.

The trustee and his firm made profit costs by preparing leases and agreements for leases of portions of the trust estate, and these costs were paid by the lessees. *Held* that, although the costs were paid by the lessees, the solicitors were employed on behalf of the trust estate, and that the trustee and his firm must account to the estate for the costs.

The solicitor and his co-trustee appointed his partner steward of a manor which formed part of a trust estate, and fees for manorial business were paid to the steward by the tenants and brought into the partnership account. *Held* that the fees, not being received by the steward in his character of solicitor, were not liable to be accounted for to the trust estate. Corsellis, *In re*; Lawton *vs.* Elwes (1887, C. A.), 34 Ch. D. 675; 56 L. J. Ch. 294; 56 L. T. 411; 35 W. R. 309; 3 T. L. R. 355; 51 J. P. 597.

373. A testatrix appointed a solicitor to be one of the executors and trustees of her will, and declared that "any trustee of this my will who may be a solicitor shall be entitled to charge my estate for all business done by him in relation to my estate in the same manner as if he had been engaged to do such business by my executors as their solicitor." The solicitor was one of the attesting witnesses. *Held* that he was not entitled to any profit costs for business done by him in relation to the estate, for that the right to make professional charges could only be claimed under the will and was a beneficial interest under it, and could not be taken by an attesting witness. Pooley, *In re* (1888, C. A.), 40 Ch. D. 1; 58 L. J. Ch. 1; 60 L. T. 73; 37 W. R. 17; 5 T. L. R. 21.

384. A solicitor who is a trustee and who sells part of the trust property to a client is in the same position as regards disclosure of all material facts within his knowledge as if he were not a trustee. He cannot set up a conflicting duty to his beneficiaries as justifying non-disclosure. *Moody vs. Cox and Hatt* (1917, C. A.), (1917), 2 Ch. 71; 86 L. J. Ch. 424; 116 L. T. 740; 61 S. J. 398.

386. Where one of the trustees of a will is a solicitor and acts as solicitor for himself and his co-trustees, communications between himself and his co-trustees, which would be privileged if the solicitor were not a trustee, are none the less privileged by reason of the fact that the solicitor is himself a trustee. *O'Rourke vs. Darbshire & Ors* (1920, H. L.), (1920), A. C. 581; 89 L. J. Ch. 162; 123 L. T. 68; 36 L. T. R. 350; 64 S. J. 322.

## VII. DEALINGS BETWEEN SOLICITOR AND CLIENT.

### (A) SALES AND PURCHASES.

398. A solicitor had a private arrangement by which he was to share the profit to be obtained from the sale of property. In his character of solicitor he acted for clients in the purchase of the larger portion of that property, never communicating to his clients the fact of his having an interest in it. *Held* that he was to be treated as a trustee for his clients in respect of his share of so much of the property as they had actually purchased, it being an established rule that a solicitor shall not in any way whatever, in respect of any transactions in the relation between himself and his client, make gain to himself at the expense of his client beyond the amount of his just and fair professional remuneration. *Tyrrell vs. Bank of London* (1862, H. L.), 10 H. L. Cas. 26; 31 L. J. Ch. 369; 6 L. T. 1; 10 W. R. 359; 8 Jur. (N. S.) 849.

400. The court does not hold that an attorney is incapable of purchasing from his client, but watches such a transaction with jealousy and throws on the attorney the onus of showing that the bargain is, speaking generally, as good as any that could have been obtained by due diligence from any other purchaser. The circumstances of the employment may be considered and the amount of influence estimated. The court expressed an opinion

that an attorney purchasing from his client ought to insist on the intervention of another professional adviser. *Pisani vs. Att.-Gen. for Gibraltar* (1874, P. C.), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900.

### (c) GIFTS.

430. A solicitor received from his client by way of gift two releases of debts owing by him, and the client also by will gave various legacies to him and his family. On the occasion of the client desiring to make a codicil to his will, an independent solicitor was called in, who at a private interview with the client explained the nature of the releases and ascertained that he thoroughly understood them and that it was his intention to give the releases in addition to the legacies. The amounts comprised in the releases were moderate, having regard to the means of the client. *Held* that the releases must be set aside. It is not sufficient to support a gift from client to solicitor that the client should thoroughly understand what he is doing. The law requires a severance of the confidential relationship in the first place. It also requires that in consequence of that severance some independent advice may be obtained by the donor. *Morgan vs. Minett* (1877, Bacon, V. C.), 6 Ch. D. 638; 36 L. T. 948; 25 W. R. 744.

432. In an action by a client to set aside a deed of gift in favor of her niece who was the wife of her solicitor, it was found by the court that there had been no undue influence on the part of the solicitor, that the matter had been thoroughly explained to the plaintiff, and that the deed as executed carried out the plaintiff's then wishes. Held by the Court of Appeal that, inasmuch as the plaintiff had not had any independent advice, the deed must be set aside. The presumption of undue influence in such cases was a presumption of law, which could not be met or refuted by any facts if the client did not have independent advice. *Liles vs. Terry* (1895, C. A.), (1895), 2 Q. B. 679; 65 L. J. Q. B. 34; 73 L. T. 428; 44 W. R. 116.

436. The onus is on a solicitor to show by some evidence in writing that his client knew of and consented to his receiving and retaining for his own use commission paid to him as agent

by an insurance company in respect of annual premiums payable on a policy effected on the life of his client. *Jordy vs. Vanderpump* (1920, Peterson, J.), (1920), W. N. 64; 64 S. J. 324; 55 L. Jo. 83; 149 L. T. Jo. 140.

### VIII. PARTNERSHIP.

455. A solicitor agreed to engage as his managing clerk an unqualified person and to pay him a salary of £3 10s. per week and in addition by way of salary a bonus of 25 per cent on all gross profits and other profits (exclusive of disbursements) received by the solicitor on all business introduced by or through the unqualified person either directly or indirectly. The last clause of the agreement provided that, in the event of the termination of the engagement of the unqualified person as managing clerk, the bonus of 25 per cent was to be continued to be paid to him notwithstanding such termination, less £3 10s. per week. *Held* that, although an agreement which merely provides for the remuneration of a solicitor's clerk by a share of the profits arising from business introduced by him to the solicitor is not illegal, the above agreement was illegal under Sec. 32 of the Solicitors Act 1843, as the last clause showed that the business introduced by the clerk was to remain the clerk's business although carried on in the name of the solicitor. *Harper vs. Eyjolfsson* (1914, Ridley & Bankers, JJ.), (1914), 2 K. B. 411; 83 L. J. K. B. 774; 110 L. T. 540; 30 T. L. R. 246.

456. An agreement between a solicitor and an unqualified person to pay remuneration to such person in respect of business introduced to the solicitor *held* to be legal. *Lake vs. Bartlett and Gluckstein* (1921, Shearman, J.), 37 T. L. R. 316.

### X. SOLICITOR AND CLIENT COSTS.

492. A contract between an attorney and an intended plaintiff, whereby the attorney was to act in the contemplated litigation and to advance money for carrying on the same, the plaintiff being unable to do so, and that in consideration thereof the plaintiff should, if successful, pay the attorney a sum of money over and above his legal costs and charges, was *Held* void on the ground of maintenance. *Earle vs. Hopwood* (1861, Q. B.),

9 C. B. (N. S.) 566; 30 L. J. C. P. 217; 3 L. T. 670;  
9 W. R. 272; 7 Jur. (N. S.) 775.

#### FEES TO EXPERT WITNESS.

1084. Solicitors, having occasion to prove the genuineness of a signature on a deed, submitted it to a gentleman from the British museum accustomed to give expert evidence in such matters. The witness examined the document, and gave a written report, for which a charge was paid of three guineas. Subsequently the solicitors subpoenaed the same gentleman, when their clerk was informed that his usual fee for attending to give expert evidence was £3 3s. The clerk took an exception to this, but did not inform the solicitors of what had passed. Afterwards the solicitors requested the same witness to compare other signatures, and he furnished a second report, for which he charged £5 5s. On the following day he was again consulted by them, and on four subsequent days he attended on his *subpœna* at the Royal Courts of Justice. He was not called, although prepared to give evidence. For these attendances he claimed £3 3s. for each day and each half-day—£12. 12s. in all. He submitted that his charges were reasonable, and such as were usually paid for his services as an expert, of whom he alleged there were only three or four available in London. The solicitors proposed to strike out the charge for one of the opinions, and to reduce the fee to £1 1s. per day, the amount of the scale allowance to a professional witness. To this the witness objected, having regard to the special character of the assistance rendered by him. The opinion of the council was asked, on behalf of both parties, whether the fees charged by the expert would be allowed, and, if not, what fees would be allowed by the taxing-master on taxation as between solicitor and client.

The council replied that the question was one on which a taxing-master would have no jurisdiction, and that the proper basis was what a jury would award in an action brought by him against the solicitor's client, which under the circumstances the council thought would be the full amount claimed by the witness, and they decided accordingly.—*Opinion of Council, June 16, 1887.*

ALLOWANCES TO WITNESS; ATTENDANCES IN COMMON LAW CHAMBERS.

1085. Solicitors inquired whether the scale of 1853, as to the allowance for attendance of witnesses, applied not only between party and party, but also as between solicitor and client. They stated that a witness, a merchant carrying on business in the city, had been in attendance on the trial of an action in the royal courts for four days, and the taxing-master would not allow more than one guinea paid with the *subpæna*, on the ground that that was provided by the scale of 1853. They referred to the new county court scale providing for daily allowances to witnesses of this class, and submitted that it was a great anomaly that witnesses in the high court should not be on the same footing as witnesses in the county court. The same solicitors also called attention to the inadequate allowance for the attendance of solicitors, before a judge or master in chambers in the queen's bench division, suggesting that the allowance should be dealt with in the same way as in the chancery division. They stated that, although the scale provided that a certificate for an additional allowance might be granted, they had never succeeded in getting such a certificate in the queen's bench division.

The council replied that, as regards witnesses' remuneration, it appeared to have been long settled that a witness who is *subpœnaed* to speak to facts within his knowledge is entitled to no remuneration; that there is a distinction in the case of an expert or scientific witness required to qualify himself to give evidence, or *subpœnaed* to speak to matters of opinion, and they considered that a solicitor could not with safety pay more than is allowed by the scale of 1853 without the previous express consent of the client. On the second point, the council replied that they had frequently reported in favor of, and pressed for, an increased allowance for solicitors' attendances in common law chambers, and would continue to do so, and that they found that recently larger allowances had been made in special cases.—*Opinion of Council, July 15, 1887.*

CLIENT ACTING CONTRARY TO SOLICITOR'S ADVICE; COURSE TO BE TAKEN BY THE SOLICITOR.

1087. A client retained a solicitor to conduct an appeal to the Court of Appeal from a judgment of Mr. Justice Kekewich.

In that appeal the client was unsuccessful, as the solicitor advised him he would be. The client was represented before the Court of Appeal by counsel. He then, contrary to the advice of counsel and the solicitor, insisted on appealing to the House of Lords, but proposed to conduct his own case; and the question involved being of an intricate legal nature, the solicitor pointed out to him the folly of his decision, he being quite incapable of properly putting his case forward. The relations between the solicitor and the client were quite friendly, and the client was anxious for the solicitor to act for him in every matter in which he as a solicitor could act. The solicitor asked whether he ought to decline to assist his client before the House of Lords, or whether his duty was to withdraw from the case altogether.

The council saw no reason why the solicitor should withdraw from the case.—*Opinion of Council*, November 1, 1888.

**UNDERTAKING TO ACCEPT SERVICE OF WRIT ; CLIENT GOING ABROAD  
BETWEEN DATE OF UNDERTAKING AND PRESENTATION OF WRIT.**

1088. An American subject temporarily residing in London was applied to by solicitors for payment of a sum of money alleged to be due to one of their clients. She instructed her solicitors to defend the action, and they wrote to the claimant's solicitors stating that the action would be defended, and that they would undertake to appear on their client's behalf. The claimant's solicitors issued a writ a few days afterwards and sent it to the defendant's solicitors for acceptance of service. They ascertained that their client had left for the continent, but they could not ascertain her address. They therefore wrote to the plaintiff's solicitors asking them to excuse their not giving acceptance of service until their client communicated with them.

The council decided that the defendant's solicitors having stated that they would accept service were bound to do so on the writ being presented to them.—*Opinion of Council*, January 21, 1889.

**SOLICITORS SERVING A WRIT ON THE REQUEST OF PLAINTIFF'S  
SOLICITOR AND AFTERWARDS ACTING FOR DEFENDANT.**

1089. A solicitor sent a writ for service to a firm of solicitors in a distant county. They effected service, and informed the

solicitor thereof. He afterwards wrote for an affidavit of service, which was made, and he paid the charges. He signed judgment and issued execution. In due course he received a report from the sheriff's officer that the defendant's goods had been sold under a deed of arrangement with creditors, in which the firm who served the writ were acting for the defendant; the sale took place the day before the solicitor applied for the affidavit of service. He contended that in the circumstances stated, if in the interval between serving the writ and the request for affidavit of service the solicitors had acted for the defendant as stated, they were bound to disclose the facts to the plaintiff's solicitor.

The council expressed the opinion that the service of the writ was purely a ministerial act, and that the affidavit was a necessary consequence, but that unless the solicitors delayed service, or the return of the affidavit, they were not exceeding their rights in acting as they appeared to have done.—*Opinion of Council*, March 11, 1889.

#### MAGISTRATES' CLERK APPEARING IN SUPPORT OF MAGISTRATES' DECISION.

1095. Solicitors called attention to the fact that a magistrates' clerk had appeared for the complainant on appeal in a case in which an appeal had been entered against a conviction by the magistrates.

The council expressed the opinion that there was no impropriety in the magistrates' clerk appearing in support of the decision of the magistrates on an appeal against a conviction by them.—*Opinion of Council*, February 17, 1893.

#### DISCLOSURE OF INFORMATION TO THE QUEEN'S PROCTOR.

1096. A solicitor, in his professional capacity, had obtained from a client information which, if disclosed to the Queen's Proctor, would, in all probability, prevent a miscarriage of justice, and inquired whether he ought to disclose it as an officer of the court.

The council expressed the opinion that it is the duty of a solicitor not to disclose secrets confided to him by his client.—*Opinion of Council*, January 12, 1894.

## SUITS IN FORMA PAUPERIS; GUARANTEE OF COSTS.

1110. A member inquired whether it was proper for him to act for a client suing *in forma pauperis*, and at the same time to enter into an arrangement with a relative of the client for the payment of his costs.

The council expressed the opinion that the position of a solicitor appearing for a litigant *in forma pauperis* is inconsistent with his having arranged for payment of his professional charges.—*Opinion of Council*, November 25, 1898.

## SUITS IN FORMA PAUPERIS; REMUNERATION OF SOLICITOR.

1111. A member called attention to Opinion No. (1098) and to the remarks of the president of the probate division in the case of Richardson *vs.* Richardson and Plowman ((1895) P. 276).

The council stated in reply that the remarks of the president certainly did seem to support the view that a solicitor retained by a pauper petitioner or respondent in divorce may receive fees from him; but they could not agree that the practice if it existed was a desirable one, nor reconcile it with Order 16, Rule 27, applicable to the chancery and common law divisions of the high court.—*Opinion of Council*, February 1, 1900.

## COLLECTION OF BOOK DEBTS ON COMMISSION.

1115. The council are advised that an agreement with a client to collect rent interest or debts the remuneration for which is to be a percentage of the amount received and which contemplates litigation would be an infringement of the law against champerty and illegal. They are, however, of opinion that such an agreement, if it excludes taking any legal proceedings, is neither unprofessional nor objectionable.—*Opinion of Council*, June 20, 1913.

## VI. RETAINERS AND FEES TO COUNSEL.

## GENERAL RETAINERS.

1121. General retainers are either ordinary or limited. An ordinary general retainer applies to the Supreme Court and

House of Lords. A limited general retainer applies to the tribunal or tribunals or court or courts to which it is expressed to be limited. A separate general retainer must be given for the Privy Council. A separate general retainer must be given for Parliamentary committees. If the counsel who has accepted a general retainer from one party should be offered a special retainer or brief by another party, the general retainer entitles the party who has given it to reasonable notice before the offered special retainer or brief is accepted. Subject to these rules a general retainer lasts for the joint lives of the client and counsel, unless the same be forfeited. In case a special retainer or brief is offered to counsel by a party other than the party from whom he has accepted a general retainer, the counsel, after giving notice to the party from whom he has accepted the general retainer of the offer of the special retainer or brief, is at liberty to accept the special retainer or brief of the other party, unless a special retainer or brief be given within a reasonable time by the party from whom he has accepted the general retainer. When a general retainer has been given, and a brief is not delivered to the retained counsel in any action or other proceeding in which the party given the general retainer is concerned, and to which it applies, or a special retainer or brief is not given within a reasonable time after a notice has been given by the counsel holding a general retainer, that a special retainer or brief has been offered to him by another party, the general retainer is forfeited; provided that the holding of a general retainer does not entitle a Queen's counsel to the delivery of a brief on occasions when it is usual to instruct a junior counsel only. Where a general retainer has been given for one person, and he is party to a proceeding with others, and appears separately, the retainer applies to that proceeding; but if he appears jointly with others, the retainer does not apply, and remains unaffected.

#### SPECIAL RETAINERS.

A special retainer cannot be given until after the commencement of an action, appeal, or other proceeding. A special retainer in an action or proceeding in the Supreme Court gives the

client a right to the services of the counsel while the action or proceeding remains in or under the control of that court. A special retainer in an action or proceeding other than an action or proceeding in the Supreme Court gives the client a right to the services of the counsel during the whole progress of such action or proceeding. A counsel who has been specially retained is entitled to the delivery of a brief on every occasion to which the special retainer applies; provided always: A special retainer does not entitle a queen's counsel to the delivery of a brief on occasions when it is usual to instruct junior counsel only. When more than one junior counsel has been retained, only one of such junior counsel is entitled to the delivery of a brief on occasions when it is usual to instruct one junior counsel alone.

#### CIRCUIT RETAINERS.

1122. A special retainer must be given for a particular assize. If the venue be changed for another place on the same circuit, a fresh retainer is not required. If the action be not tried at the assize for which the retainer is given, the retainer must be renewed for every subsequent assize until the action is disposed of, unless a brief has been delivered. A retainer may be given for a future assize, without a retainer for an intervening assize, unless notice of trial shall have been given for such intervening assize.

#### RETAINERS ON APPEAL.

When a counsel has held a brief for any party in an action or proceeding, but has not received a general or special retainer, he shall not accept a general retainer or a brief on appeal (including in that expression appeals to the House of Lords and to the Privy Council) for any other party, without giving the original client the opportunity of retaining or delivering a brief to him.

#### RETAINERS WHEN COUNSEL HAS ACTED FOR THE OTHER SIDE.

Counsel who has drawn pleadings or advised or accepted a brief during the progress of an action on behalf of any party shall not accept a retainer or brief from any other party without giving

the party for whom he has drawn pleadings or advised or on whose behalf he has accepted a brief the opportunity of retaining or delivering a brief to him, but such counsel is entitled to a brief at the trial, and on any interlocutory application where counsel is engaged, unless express notice to the contrary shall have been given to him with the instructions to draw such pleadings or advise or at the time of the delivery of such brief. Provided always, such counsel shall not be entitled to a brief in any case where he is unable or unwilling to accept the same without receiving a special fee. No counsel can be required to accept a retainer or brief, or to advise or draw pleadings, in any case where he has previously advised another party on or in connection with the case, and he ought not to do so in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by the other party, or in which his acceptance of a retainer or brief or instructions to draw pleadings or advise would be inconsistent with the obligation of any retainer held by him, and in any such case it is the duty of the counsel to refuse to accept such retainer or brief, or to advise or to draw pleadings, and in case he has received such retainer or brief inadvertently, to return the same.

#### RETAINERS; PROMOTION OF COUNSEL.

The retainer of a counsel does not cease upon his being promoted to a higher rank at the Bar.

#### RETAINERS: AMOUNT OF FEES.

The fees for general retainers are as follows:

In Parliament (Committees).....	Ten Guineas.
In all other cases.....	Five Guineas.

The fees for special retainers are as follows:

In Parliament (Committees).....	Five Guineas.
In the House of Lords and Privy Council.....	Two Guineas.
In all other cases.....	One Guinea.

(*The above rules were prepared by the council in consultation with the Bar Committee and sanctioned by the attorney-general, June 26, 1892.*)

COUNSEL ACCEPTING BRIEF WITHOUT THE INTERVENTION OF A SOLICITOR.

1126. The Secretary to the Bar Committee inquired whether a barrister would be in order in accepting a brief from a vestry clerk not a solicitor, on a local government inquiry.

The council expressed the opinion that it would be contrary to professional etiquette for a barrister to accept a brief from a person who is not a solicitor. In their opinion the rule hitherto recognized is, that, except in the case of the preparation of a will, or of the defence of a prisoner at the Bar, and possibly in certain cases connected with patents and average statements, a barrister is not entitled to communicate with a lay client, and receive fees from him directly. In the year 1881 a case came before the council in which a complaint was made by a member of the society against a member of the Inner Temple, who, on the instructions of a lay client, had prepared an abstract of title, perused a conveyance, and answered requisitions made on behalf of the purchaser. The matter was brought by the council before the Benchers who severely censured the barrister, and cautioned him as to his future professional conduct.—*Opinion of Council, June 29, 1894.*

#### IX. MISCELLANEOUS.

DISCLOSURE OF THE WILL OF A CLIENT BECOMING OF UNSOUND MIND.

1169. A solicitor prepared his client's will, and it remained in his custody after signature. The testator some time afterwards became incapable of attending to business, and his friends wished to know the provisions of the will. The solicitor had given up practice, and inquired whether there would be any objection to his handing the will to the solicitor who usually transacted the business of the testator's family.

The council expressed the opinion that it was the solicitor's duty to retain the will until he had the authority of the testator to part with it, and that he ought not to allow any person to make himself acquainted with the contents of it.—*Opinion of Council, May 19, 1871.*

## USE OF LETTERS MARKED "PRIVATE AND CONFIDENTIAL."

1170. A letter written by one solicitor to another in the course of negotiations respecting an alleged trespass was headed "Private and confidential." The negotiations fell through, and proceedings for an injunction were taken, and the letter was put in evidence. The matter was thereupon brought to the notice of the Law Society, and they were asked whether they considered that anything could justify a solicitor in making use, in evidence, of a letter marked "Private and confidential."

The council stated, in reply, that they were unable to say that under no circumstances would a solicitor be entitled to make use in evidence of a letter marked "Private and confidential." Their opinion was that in business matters between professional men such letters should not be written, as the recipient might have a duty to discharge towards his client which would override any consideration between the solicitors personally—*Opinion of Council*, November 3, 1882.

## DEEDS HANDED TO SOLICITORS TO ARRANGE LOAN; NOTICE OF FRAUD ON THE PART OF CLIENT; COURSE TO BE TAKEN.

1171. Deeds were handed to solicitors with a request that they would procure a loan on the security of the property comprised therein. From an examination of the deeds it appeared that the proposed mortgagor, from whom the deeds had been received, was the owner in fee; but the solicitors were informed by persons claiming to be interested in the property that he had in fact conveyed it away, and such proved to be the case. The solicitors were requested by the claimants either to hold the deeds, or to make such an endorsement on them as would prevent the contemplated fraud being carried out. The opinion of the council was requested whether the solicitors would be justified in taking either of the above-mentioned courses, or whether any further steps in the matter should be taken by them beyond simply returning the deeds and refusing to complete.

The council expressed the opinion that the solicitors were not entitled to withhold the deeds, or to place any endorsement upon them; but that their proper course was to give sufficient notice to the claimants of their intention to return the deeds on a

given day, leaving them to take the proper steps for their own protection.—*Opinion of Council*, March 7, 1884.

**ALTERATION OF WILL; REVOCATION OF APPOINTMENT OF A SOLICITOR AS EXECUTOR.**

1172. A gentleman instructed a solicitor to alter his will, the chief alteration being the appointment of the solicitor's father as one executor in the place of a solicitor who had hitherto acted for the testator. The new solicitor did not know the reason of the change. Knowing the former solicitor well, the new solicitor felt a great delicacy in the matter, as he knew that the testator wished for absolute secrecy, and thought it his duty not to divulge a word. After the death of the testator great blame was attached to the new solicitor for not having told the former solicitor.

The council expressed the opinion that both professional propriety and the solicitor's duty to his client bound him to keep the matter a secret.—*Opinion of Council*, July 14, 1884.

**CHANGE IN FIRM; APPORTIONMENT SCALE CHARGES.**

1175. When a change occurs in a solicitor's partnership, and business to which the scale applies has been done partly by the old firm and partly by the succeeding firm, the council consider that the division should be regulated according to the proportion of the work actually done by the respective firms.—*Opinion of Council*, October 21, 1887.

**SOLICITOR USING FOR CLIENT'S BENEFIT INFORMATION ACQUIRED AS CLERK TO ANOTHER SOLICITOR.**

1176. A question was asked whether a solicitor is justified in using for the benefit of a client, in carrying out that client's instructions, information which it is to the client's interest to know, but which had been acquired by the solicitor in a quasi-confidential capacity—such as when he was clerk to another solicitor, before he himself started in practice. The facts were as follows: The solicitor's client owned a building estate on one side of a road. The land on the other side belonged to persons who were commencing to erect shops, which, in the client's

opinion, would spoil his property, and he instructed the solicitor to do what he could to prevent shops being erected, he having already lost a tenant on account of the proposed erections. Prior to starting in practice the solicitor was a salaried conveyancing clerk to a firm of solicitors representing the estate on part of which the shops were being erected, and he ascertained the existence of a mutual deed of covenant between a former vendor and certain purchasers of part of the land prohibiting the erection of shops on any part of the estate. On account of the prohibition the purchase was not completed.

The council expressed the opinion that, inasmuch as the existence of the covenant against building shops was disclosed by an intending vendor to the employers' client as an intending purchaser, and therefore was not information acquired by the solicitor's late employers in confidence, but in relation to an outsider's affair, the solicitor was justified in using the information for the benefit of his client.—*Opinion of Council*, July 26, 1889.

#### SOLICITOR ACTING AS STOCKBROKER OR LAND AGENT.

1179. A solicitor asked whether it was legal for him to do stockbroking or land agency work.

The council replied that they were not aware of any reason which made it illegal for a solicitor to act as stockbroker or land agent.—*Opinion of Council*, February 24, 1893.

#### SPECIAL ARRANGEMENT BETWEEN SOLICITOR AND CLIENT AS TO COSTS.

1180. A solicitor was asked to do business for a society upon terms involving a reduction of the regulation charges. One of the provisions imposed by the society was that when no actual consideration money was recorded in the deed the value of the property should be ascertained by the secretary of the society, and such value accepted by the solicitor as the basis of his bill under the *ad valorem* scale. Another provision was that for work done in connection with investments made by the society the solicitor should charge only one-half the *ad valorem* scale. The third provision was that in chancery and special matters the

solicitor should receive only half the amount of his taxed costs, the other half being paid to the society. The council were asked to advise the solicitor as to whether if he accepted business from the society upon these terms his doing so would clash in any way with the principles governing the profession with regard to their charges.

The council replied that, although they could not understand how the actual consideration money could be omitted from the deed when property of value was being dealt with, having regard to the provisions of the Stamp Act, they did not see any objection to the first of the proposed stipulations. The second stipulation also seemed to them to be free from objection. The third stipulation seemed to the council to be very objectionable from a professional point of view, whatever the opinion might be as to its being contrary to the Solicitors Acts. As regarded the general law, they pointed out that different considerations would arise where a solicitor was paid by salary and did not transact professional business for any other client. (*Cf. Galloway vs. The Corporation of London (20.).—Opinion of Council, July 28, 1893.*)

#### INSTRUCTIONS FOR WILL RECEIVED FROM A THIRD PARTY.

1195. A solicitor prepared a will for a testatrix on the instructions of her daughter, who requested that the will when prepared should be handed to her, in order that she might obtain her mother's signature. The solicitor declined to adopt that course, and said that the testatrix must either come to his office and sign the will after he had the opportunity of going through it with her, or he would have to attend the testatrix at her house. The daughter alleged that her mother was ill.

The council expressed the opinion that the course adopted by the solicitor was quite correct.—*Opinion of Council, February 1, 1900.*

#### ADMISSION OF SUBJECTS OF FOREIGN STATES AS SOLICITORS IN ENGLAND.

1195\*. A question having been raised whether the subject of a foreign state is by reason only of his alienage disqualified

for admission as a solicitor of the Supreme Court in England, a case was laid before Mr. Asquith, Q. C., M. P., who expressed the opinion that an objection based on an applicant for admission being the subject of a foreign state would be valid. Counsel thought that the question depended on the true construction of Sec. 3 of the Act of Settlement, and in particular upon the scope which is to be given to the words "any office or place of trust either civil or military." He drew attention to the fact that from very early times attorneys and solicitors had been treated by the legislature as officers of the courts of common law and equity respectively, and that by 4 Henry IV., c. 18, it was provided that "all attorneys shall be sworn well and truly to serve in their offices." He thought that it was immaterial that solicitors were not appointed by and did not hold office by grant from the crown. On this point he referred to *R. vs. Mierre* (1771), 5 Burr, 2788.—*Opinion of Mr. Asquith, now the Rt. Hon. H. H. Asquith, K. C., M. P.*, February 12, 1900.

NOTE.—The Council have therefore determined to object to the admission of any subject of a foreign state. This is announced on the form of notice for admission.

#### SOLICITORS PARTICIPATING IN AUCTIONEERS' COMMISSIONS.

1200. A solicitor received a letter from an auctioneer intimating that if at any time he had clients requiring temporary accommodation of money and would place particulars before him he would be pleased to recognize the compliment in substantial form should business result. The solicitor inquired whether in the opinion of the council the conduct of business upon the lines proposed was proper.

The council replied that they strongly disapproved of the practice of solicitors participating in auctioneers' commissions.—*Opinion of Council*, May 16, 1901.

#### TRAVELING EXPENSES; SEASON TICKET HOLDER.

1202. A solicitor had a first-class contract ticket which enabled him to travel over a considerable portion of the county in which he carried on business. He had purchased this ticket chiefly for office use. It had been his custom if he went on an office journey to places within the limits of his contract ticket not

to charge his client anything for railway fare. He asked for the opinion of the council whether in the circumstances stated he was entitled to charge first-class return fare, or any other sum.

The council expressed the opinion that he was not entitled to charge the client with first-class return fare, and seeing the practical impossibility of apportioning the amount paid for the contract ticket in the first place between personal and business journeys, and secondly between the various clients, the council came to the conclusion that no portion of the sum paid could be charged to the clients.—*Opinion of Council*, July 25, 1901.

#### SOLICITORS ENGAGING IN OTHER BUSINESSES.

1213. *Resolved*, That there is nothing wrong in a solicitor employing his surplus time and energy in carrying on any honorable profession or business, but the council cannot express any opinion upon questions of detail without knowing the exact facts of each case.—*Opinion of Council*, November 10, 1905.

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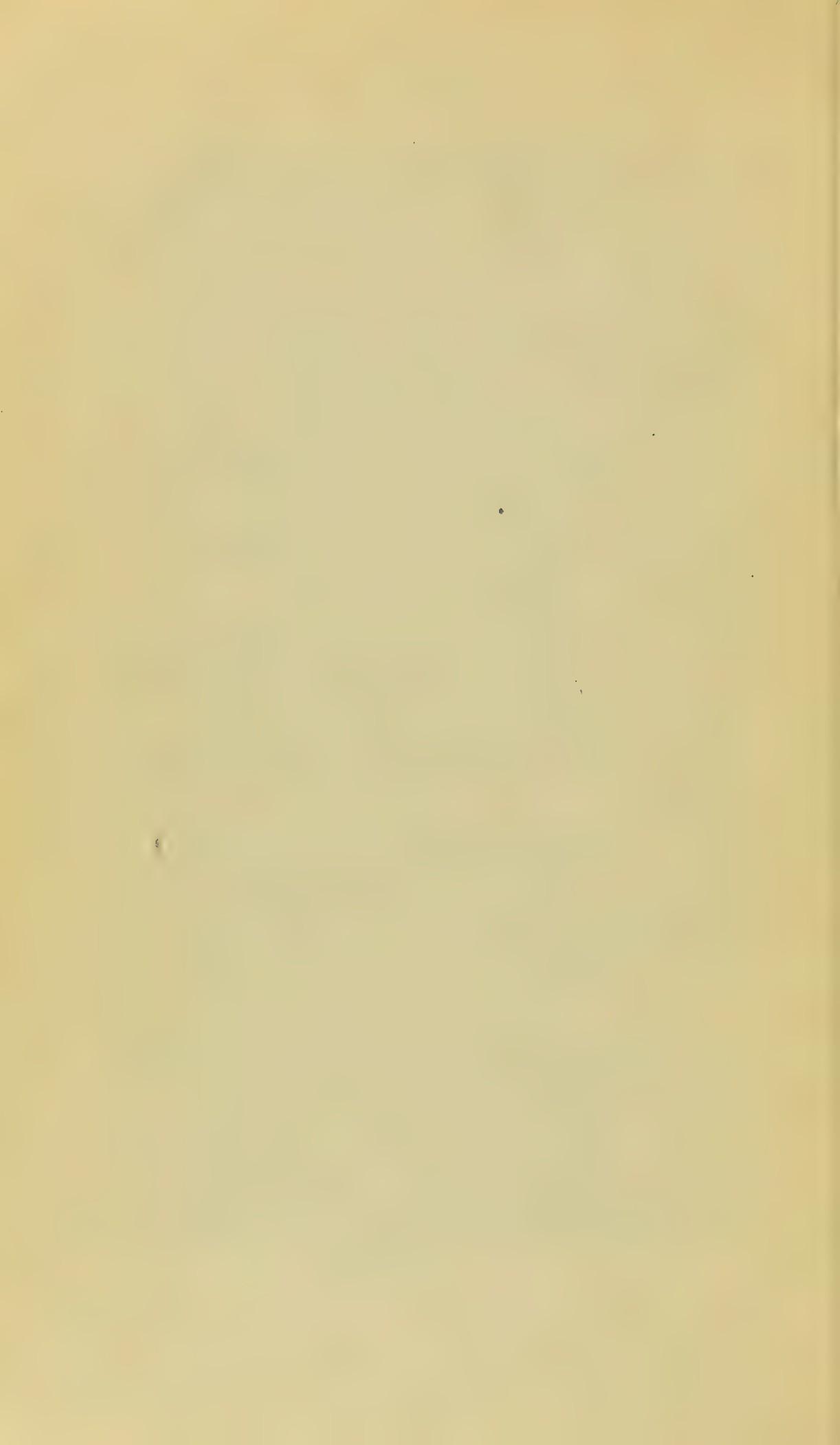
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**CANONS OF ETHICS  
OF THE  
AMERICAN PATENT LAW ASSOCIATION**

*Preamble*

In America, where the stability of courts and all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

Though prepared originally for general court practitioners, the Canons of Ethics of the American Bar Association are appropriate for practitioners before the Departments of the Federal Government, Federal Commissions, and like bodies, and hence are adopted as the basis of this code for the American Patent Law Association. Additions to certain of the canons of the American Bar Association are designed to cover matters peculiar to practice and practitioners before the Federal Department and the bureaus thereof, Federal Commissions, and the like, and all terminology of such canons originally applicable only to courts, court practice and court practitioners, shall, so far as applicable, be deemed and taken to apply to and include Federal departments, bureaus, commissions, and like bodies, the officials thereof and practitioners before the same, and specifically, officials of the Patent Office and all practitioners before said office.

*1. The Duty of the Lawyer to the Courts and to the Patent Office.*

It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

Frankness toward the Patent Office should always be observed. It is the duty of every practitioner before the Patent Office to be as concise and direct as possible in the prosecution and disposition of all cases.

*2. The Selection of Judges.*

It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments whether of a business, politi-

cal or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

### *3. Attempts to Exert Personal Influence on the Court, or to Enlist the Services of Officials.*

Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstruction of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merit of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

It is unprofessional in any manner to use the name or solicit the services of any member of either House of Congress or of any other officer of the Government as an aid to procuring business or prosecuting cases, and clients should be discouraged from seeking such aid.

### *4. When Counsel for an Indigent Prisoner.*

A lawyer assigned as counsel for an indigent prisoner or litigant ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

### *5. The Defense or Prosecution of Those Accused of Crime.*

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

### *6. Adverse Influence and Conflicting Interests.*

It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within

the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

It is unethical for an attorney to prosecute conflicting or overlapping applications for different and independent clients.

It is unethical for any one who has served in the Patent Office, to prosecute, directly or indirectly, applications having subject matter which to his knowledge will conflict with other unissued applications of which, during his employment in the Office, he has obtained confidential information; or to give out or make use of any information regarding such unissued applications, or relating to the inventions covered thereby.

Acceptance by such ex-officials of employment involving cases with which they were brought into contact while in office is improper.

#### *7. Professional Colleagues and Conflicts of Opinion.*

A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally, after communication with the lawyer of whom the complaint is made.

#### *8. Advising Upon the Merits of a Client's Cause or Course.*

A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

*In patent matters,* the uninformed or inexperienced client should be told

whether or not it is advisable to have a preliminary examination made before incurring any application expenses, and if such examination is made, actual copies of the pertinent references should be furnished to him. If, in the opinion of the solicitor, the invention submitted is substantially anticipated, the client should be so advised, and discouraged from filing an application.

It is improper to encourage the filing of applications for foreign patents without fully informing the client of recurrent taxes, workings, and other requirements of foreign laws.

It is unethical to advise filing of foreign applications before receiving action on the U. S. application, unless shortness of time requires earlier filing abroad; or to encourage such applications in the absence of special reason or clear indication of probable benefit to the applicant.

#### *9. Negotiations With Opposite Party.*

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

#### *10. Acquiring Interest in Litigation.*

The lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting.

#### *11. Dealing With Trust Property.*

Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except the client's knowledge and consent should not be commingled with his private property nor be used by him.

#### *12. Fixing the Amount of the Fee.*

In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay can not justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the

certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

When patent, trade-mark or copyright matters are referred to specialists in these fields by lawyers in general practice, there should be no division of the specialists' fees with the general practitioner.

### *13. Contingent Fees.*

Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.

### *14. Suing a Client for a Fee.*

Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and law-suits with clients should be resorted to only to prevent injustice, imposition or fraud.

### *15. How Far a Lawyer May Go in Supporting a Client's Cause.*

Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

### *16. Restraining Clients From Improprieties.*

A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors,

witnesses and suitors. If a client persists in such wrongdoing the lawyer should terminate their relation.

#### *17. Ill Feeling and Personalities Between Advocates.*

Clients, not lawyers, are the litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

#### *18. Treatment of Witnesses and Litigants.*

A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

#### *19. Appearance of Lawyer as a Witness for His Client.*

When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.

#### *20. Newspaper Discussion of Pending Litigation.*

Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any *ex parte* statement.

#### *21. Punctuality and Expedition.*

It is the duty of the lawyer not only to his client, but also to the Courts and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

#### *22. Candor and Fairness.*

The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the con-

tents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the Court should reject, in order to get the same before the jury by arguments for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

### *23. Attitude Toward Jury.*

All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

### *24. Right of Lawyer to Control the Incidents of the Trial.*

As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories, and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

### *25. Taking Technical Advantage of Opposite Counsel—Agreements With Him.*

A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.

## *26. Professional Advocacy Other Than Before Courts.*

A lawyer openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

## *27. Advertising, Direct or Indirect; Stimulation of Invention, Etc.*

The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This can not be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

No reference for advertising purposes should be made to membership in any Professional Association, or to any activities therein.

Stimulation of the development and patenting of inventions by the enumeration of inventions alleged to be desired by the public, or the citation of instances of great profit made by inventors, or the offering of service for grossly inadequate fees (whether or not the fee shall be increased in the event of success), for the purpose of securing business; or cultivating business by a "no-patent—no-pay" guarantee; or offering to publish or sell the patent when secured (unless the offer is reasonably explained and subjected to proper reservations) is improper.

Patent, trade-mark and copyright services being largely a matter of personal relations and mutual confidence between the solicitor and the client, it is improper to perform any professional services under any corporate name or other title than one's individual or partnership name. Firm names should include only the names of present or past active partners.

## *28. Stirring up Litigation, Directly or Through Agents; Solicitation of Legal Business, Etc.*

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty

to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in title or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

It is unprofessional for a member of the Bar, or a person admitted to practice before the Patent Office, in any manner to lend his services or the privileges he enjoys as such, to any corporation, or layman, or group of laymen, who solicit legal business from the public, or hold themselves out as equipped to perform, or to obtain the performance of, any legal services or any services requiring in their conduct a member of the Bar, or a person admitted to practice before the Patent Office.

Recommending trade-mark opposition or cancellation proceedings, except when justified by personal or professional relations (and then only in obviously proper or debatable cases) is condemned. Hunting up or developing other possible Patent Office *inter partes* proceedings and advising action thereon unless warranted by personal or professional relations is also condemned.

#### *29. Upholding the Honor of the Profession.*

Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

It is the duty of every practitioner who may have knowledge of any violation of Section 487, as amended February 18, 1922, 67 Statutes at Large, or of Rules 17 (h) and 22 (c) of the Rules of Practice, U. S. Patent Office, to inform the appropriate tribunals thereof and to assist, if requested by the proper officials, in the presentation of the facts concerning any such acts, to the end that the offenders may be warned, reprimanded, or disbarred.

Partnerships or other associations for the performance of professional service either in or out of court, should not hereafter be formed between members of the Bar and non-members, and firm names or titles which in-

clude the name of a person not a member of the Bar should not be adopted or used; provided, however, that persons duly registered on or before the 31st day of December, 1925, as entitled to practice before the United States Patent Office, and in good standing at said date, shall be recognized as having the same status before the Patent Office as members of the Bar, if clear indication be given in connection with the use of the firm name or of the individual names of the members thereof, according to their qualifications as registered solicitors of patents or as attorneys-at-law.

Professional association with any disbarred or discredited attorney is intolerable.

### *30. Justifiable and Unjustifiable Litigations.*

The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

### *31. Responsibility for Litigation.*

No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into Court for plaintiffs, what cases he will contest in Court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

### *32. The Lawyer's Duty in Its Last Analysis.*

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

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